

# THE COMMUNITY LAND TRUST

## A Guide to a New Model for Land Tenure in America

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## Preface: 2007 Reprint

This reprint responds to a felt need to preserve what may well be the first documentation of the Community Land Trust concept. The concept and principles evolved in part from the experience of several pioneering alternative landholding initiatives of the time such as the Jewish National Fund, Bryn Gweled Homesteads, and New Communities, Inc. Bob Swann, the principle author, was strongly influenced by thinkers such as Henry George, Ralph Borsodi and E. F. Schumacher. This led him to help establish what he believed to be the first experiment of this sort in Albany, GA in 1967.

But the term "community land trust" does not seem to have been used in these pioneering projects. I believe the term was born in 1972 with this publication. The movement has come a long way in the 35 years since. Directories now list over 170 CLTs and CLT projects in the USA.

International Independence Institute, the think tank out of which Bob Swann, Shimon Gottschaulk, Erick Hansch and this writer worked, was laid to rest toward the end of the 1970s. By then Institute for Community Economics (ICE) was well along with its mission to help CLTs take root. Bob Swann moved on, becoming a founder of The E. F. Schumacher Society, one several groups currently promoting the concept and supporting the establishment of CLTs.

Among them—

- The Schumacher Society ([www.smallisbeautiful.org](http://www.smallisbeautiful.org))
- Institute for Community Economics ([www.iceclt.org](http://www.iceclt.org))
- National CLT.org
- Burlington Associates ([burlingtonassociates.com](http://burlingtonassociates.com))
- CLT Academies:

Florida Housing Coalition (Florida only)

Lincoln Institute of Land Policy (Boston), [www.lincolnst.edu](http://www.lincolnst.edu)

With this reprint we have preserved the entire text intact, adding only this intro page and modifying the original cover and title page. To the best of our knowledge CCED of Cambridge, MA, the original publisher, has long since been dissolved so the original copyright line has been dropped. Print quality is variable thanks to the original edition's earthy dark brown ink on light brown stock and some of the exhibited documents that had already been through several generations of copying.

The core ideas in this volume I attribute to Bob Swann with my contribution primarily helping to clarify and edit. Many of these ideas still lie at the core of today's CLT movement, of interest to all and perhaps even helpful to some.

--*Ted (Edward) Webster,*  
*DRA of Vermont*  
*February, 2007*

## Preface

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This guide describes one of the most exciting new tools that low-income communities can use to gain control of the development process in their own neighborhoods. It is a tool that can be used in either urban or rural areas, especially in conjunction with a local community development corporation — itself an innovation of poor communities for their own development.

The Center for Community Economic Development has had a continuing interest in the land trust concept through its three-year association with the Featherfield Farm project in southwest Georgia. That project seeks to build an entire, small new town on a 5,700-acre farm, under the control of local low-income people, especially black sharecroppers in a multi-county area. It is sponsored by New Communities, Inc., a rural-oriented, civil rights, community development group that has pioneered the land trust concept for that project. NCI is described in detail in this guide, and some lessons are drawn from what is still an incomplete experience.

As a policy research and advocacy center, CCED has tried to promote attention to the Featherfield Farm project and support for it as one of the most promising ideas for definitive rural development. In the past year, we have also sought to expand our focus to a whole variety of policy issues of land development and land allocation, in both rural and urban areas. This guide is only one of a series of completed and planned publications on the general topic of land development.

In April 1971, CCED asked Robert Swann and his colleagues at the International Independence Institute to prepare for us a monograph on the use of the community land trust as an adjunct for local programs of community-based economic development. At first, we all thought that we could engender a manual that would lay out, step by step, the initiation and use of the trust mechanism. As the research proceeded, however, it became clear that a "manual" was premature. Although there was probably no one in the country who was better qualified than the authors to write such a manual, the fact was that relevant experience anywhere is too sketchy for such an ambitious task.

We settled instead on the more modest goal of producing an introduction to the concept and some descriptive materials on how it had been used to date in a wide variety of partial or variant applications. This guide admirably reaches that goal. It should be viewed as a preliminary publication, produced with the explicit expectation of being superseded in a couple of years when additional experience around the country can be mined.

However, today so many people — leaders of low-income communities and others — have come to recognize the critical importance of land in the development process that there is an urgent need to communicate whatever ideas and information exist now for immediate application to current problems. Thus, even prior to publication, the authors have had hundreds of requests for this guide. Its real utility,

however, will rest upon whether it can stimulate action well beyond what the authors have been able to present on these pages.

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CCED is especially concerned that the ideas presented in this guide have relevance for the residents of low-income areas, for they are our constituency; it is on their behalf that we work. (A grant from the Economic Development Division of the Office of Economic Opportunity has made the writing and publication of this guide possible.) Therefore, we do not intend to rely simply upon written materials such as this guide but will also periodically sponsor and participate in seminars or individual consultations with community development corporations and other community groups on problems which this guide addresses. For that reason, CCED is especially eager to maintain an up-to-date record of the experience of those who have struggled with the land development problem.

All readers and users of this guide are urged to write the authors (or CCED) and communicate their comments, criticisms, and above all their experiences with the land trust approach. Only with the exchange of such information can communities hope to solve the staggering problems of development that they face today.

Stewart E. Perry, Director  
Center for Community Economic Development

## Foreword and Acknowledgements

Although by far the greatest technological development has occurred during the past century, most truly fundamental ideas have been with us much longer. The idea of “stewardship” or “trust” with respect to the land and natural resources is one of these fundamental ideas — expressed, one way or another, in early landholding practices. Yet the idea was swallowed up and almost forgotten in mankind’s rush to industrialize.

When mankind’s activities or institutions ignore nature’s realities, sooner or later history catches up and the realities must be faced. One reason why the idea of the community land trust is apparently so exciting and relevant to so many people right now is that they are beginning to see that we have arrived at that point. Economic, ecological, and political crises are looming in a way that is now becoming very real. We are hungry for alternatives to existing land use practices based on more ethical distribution and rational consumption of resources.

As of this writing, *Limits to Growth*<sup>1</sup> has been on the market just a few months, and is already in its third printing. Prepared under the sponsorship of the Club of Rome, an informal, worldwide organization of leaders in industry, technology, and science, it contends that our rather heedless technological and population growth has crashed headlong into the finite nature of the earth, its limited amount of space and resources. It is essential that we immediately begin to reorder our institutions and plan to establish a stabilized economy. One key to such an “equilibrium state” is the holding of resources in *trust* for the good of mankind as a whole and future generations.

The followers of the economic philosophy of Henry George maintain that all wealth, in the final analysis, comes from the land, and that the current pattern of private land ownership and a tax policy that encourages land speculation are at the root of a host of economic evils, including inflation and maldistribution of wealth.

Although many may disagree in part or *in toto* with this position, it is nonetheless obvious that exclusion from land and its resources seriously handicaps those struggling for economic equality. Today’s tax and related policies tend to make land costs too high for small farmers to survive. In urban areas inflated land values (and a property tax system that discourages improvements) have a lot to do with the urban “housing crisis.” As we move into various forms of cooperative enterprise, such as consumer cooperatives and community development corporations (CDCs), where land use is involved, a complementary landholding structure is desirable. These are the kinds of problems addressed by the community land trust concept.

The basic principle appears quite simple. But getting it into more concrete terms and applying it is harder. The idea is both old and new; it has both conservative and radical aspects. It may be one avenue for root changes in society by nonviolent means and will be opposed by those who amass largely unearned fortunes from private exploita-

1 Donella H. Meadows et al., *The Limits to Growth*, “A Report for the Club of Rome’s Project on the Predicament of Mankind” (New York: Universe Books, 1972).



tion of irreplaceable resources and rising land values — but, at the same time, it may also be opposed by minority groups rallying to the principle of unfettered local control. And it may be greeted with skepticism by middle-class dropouts “doing their own thing” in the country.

It is therefore not surprising that in the United States and elsewhere there are only a few experiments based on the community land trust idea. This study is at least in part advocacy, emphasizing a somewhat hypothetical model which as of this writing exists only in the form of various prototypes. One reason why a guide such as this is needed is because there is not much in the way of legal tradition or precedent; there exist no legal structures designed specifically to support the land trust principle.

Such are the realities that have made our task challenging. We as authors are aware that this guide is just a beginning, that we have left many gaps and questions unanswered. To fill these gaps we will rely upon an expansion of our own experience, communication with the many new relevant experiments we see springing up across the country, and upon response from the readers. With this kind of input we can build more complete future editions.

The fund of knowledge and experience is expanding quickly. Organizations are beginning to respond to the “land question.” A 1970 American Friends Service Committee report has stated:

Present patterns of land use are central to the flaws in our economic picture. Only through basic changes in these patterns can we hope to create an economy which serves man. . . . Public trusts should be created, with power to acquire land, to purchase easements or development rights and to lease land to local government bodies, community groups, private developers or industry.<sup>2</sup>

The Cambridge Institute, through its New City Project, and the Center for Community Economic Development, through publication of this book and other activities, have also become effective and creative protagonists for new solutions.

More publicly, the “land reform” issue was recently explored in some depth by Peter Barnes in a three-part series of articles in *New Republic* (June 1971).<sup>3</sup> Shortly thereafter, the National Coalition for Land Reform was founded with both West and East Coast offices.<sup>4</sup>

At CCED and almost everywhere else we turned for advice and assistance we received a helpful response. We would like to acknowledge the contribution of Shimon Benshemesh, Director General of the Jewish National Fund; Mildred Loomis of the

2 *Man and the Economy: The Social Implications of Economic Patterns*. (American Friends Service Committee, 160 North Fifteen Street, Philadelphia, Pa., 1970). See also, Kari Davies, “Why Land Trust? How Land Trust?” (American Friends Service Committee, 48 Inman Street, Cambridge, Mass.) x

3 Peter Barnes, “Land Reform [three articles],” *New Republic*, June 5, 12, 19, 1971. [“The Great American Land Grab”; “The Vanishing Small Farmer”; “The Case for Redistribution”].

4 National Coalition for Land Reform, 126 Hyde St., Suite 101, San Francisco, Calif. 94102; or 1878 Massachusetts Ave., Cambridge, Mass. 02140.

## Part One: The Idea

## Chapter One: The Community Land Trust

### Defining the Community Land Trust

The community land trust constitutes a social mechanism which has as its purpose the resolution of the fundamental questions of allocation, continuity, and exchange.

*The community land trust is a legal entity, a quasi-public body, chartered to hold land in stewardship for all mankind present and future while protecting the legitimate use-rights of its residents.*

The community land trust is *not* primarily concerned with *common ownership*. Rather, its concern is for *ownership for the common good*, which may or may not be combined with common ownership.

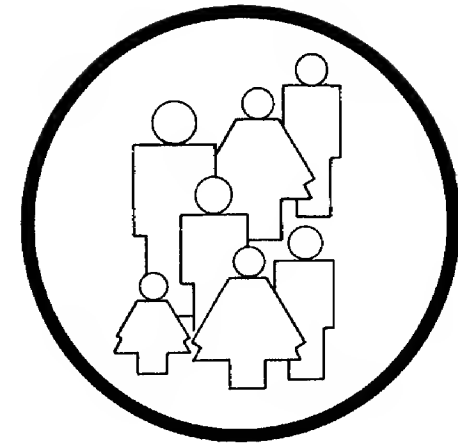
Precisely how the community land trust attempts to resolve the questions of allocation, continuity, and exchange is detailed throughout the guide. In this chapter, we will introduce only the most salient assumptions, definitions, and principles.

**The Concept of Trust.** The choice of the word “trust” is based upon our desire as authors to emphasize the notion of “trusteeship” or “stewardship.” If land is limited, then its use in the face of steadily expanding human demands upon it must be regulated for the long-range welfare of all people.<sup>16</sup>

Our choice of the word “trust”<sup>17</sup> can be explained further by our desire to emphasize Ralph Borsodi’s idea of “trusterty.” Borsodi suggested that possessions should be classified as either “property” or “trusterty.” Property is created by man through his labor. Trusterty includes land, the atmosphere, rivers, lakes, seas, natural forests, and mineral resources of the earth. Since these do not come into existence as a result of human labor, they cannot be morally owned; they can only be held in trust.<sup>18</sup>

Originally land was “free”; it had no price. But with time, as desirable land has become increasingly scarce, its price has increased. During the past century this increase has progressed at a rate that far exceeds the rise in the cost of living. (It may be reasoned that whenever men derive economic value from that which they have not produced, this becomes at least one factor behind inflation — and some economists go so far as to say it is the only factor.) *When land is exchanged as “property” (rather than as “trusterty”), the impact of such exchanges upon the total economy are in the long run dramatic, if not catastrophic.*

Land is held by the community land trust in perpetuity — probably never to be sold. Thus, the problems of exchange are virtually eliminated. The trust leases the land to the users with the expectation of preserving or enhancing its long-range resource value. The leases are long-term, restricted to the actual users of the land; absentee control and subleasing are specifically proscribed. The residents have secure use-rights to the land and are free to control and build their own community through cooperative organizations or individual homesteads.



16 A variety of modern thinkers have cried out for the restoration of the notion of trust in connection with land. The best known are such disparate souls as Marx and Gandhi. In the West, Henry George’s *Progress and Poverty* (1880) became an instant worldwide bestseller; the reading public seemed hungry for new approaches to the “land problem.” During the Depression, it was the social philosopher Ralph Borsodi, perhaps more than anyone else, who discovered a way to translate George’s ideas (of land as a source of wealth) into the field of applied economics.

17 Hopefully, the community land trust will not be confused with an ordinary real estate trust which usually has individual, private beneficiaries and has as its purpose the protection of private profits.

18 The concept of “trusterty” includes more than natural resources; it includes also abstractions such as legal grants. It is more complex than it might first appear to be. For a full discussion of trusterty, see Ralph Borsodi, *Seventeen Problems of Man and Society* (Anand, India: Charotar Book Stall, 1968), especially pp. 333-372. The book is available from School of Living, Freeland, Md.

Both in concept and in practical operation, the community land trust distinguishes between land with its natural resources and the human improvements thereon, often called property externalities. The land is held in trust, not the improvements.<sup>19</sup> Homes, stores, and industrial enterprises created by the residents will be owned by them, either cooperatively or individually.

**Community.** We use the word "community" in the term community land trust fully conscious of the fact that it is an overused, imprecise, and confusing word. Throughout this guide we will try to be relatively specific in our usage. We will refer to the people actually living on the land trust as the "*resident community*." The larger "*community*" includes the resident community as well as those who intend to be residents, support the trust, or who otherwise identify with the trust.<sup>20</sup> And although we have tried not to use it in this sense, we recognize the broader connotations of the concept of the community land trust: "community" in the largest sense, the community of all mankind, an idea that is essential to the concept of trustery.

#### Applications of the Community Land Trust Concept

The community land trust addresses the contradiction between the private ownership of land and its inherently limited nature in the face of multiplying population pressures. Therefore, in theory and, we hope, increasingly in practice, it can be applied wherever private landownership exists. However, from the standpoint of practicality, we should outline certain specific areas or ways in which the community land trust might first be applied.

**Rural New Towns.**<sup>21</sup> In the United States as well as in most other Western and industrialized countries, maldistribution of population is one of the more pressing problems. In the United States, 70 percent of the population lives on 2 percent of the total land area.<sup>22</sup> The all-too-familiar urban problems are directly linked to this population pattern; many are, in fact, rooted in the "lack of access to productive land ownership by groups who today constitute the urban poor."<sup>23</sup> One approach to redistributing the population is the new, planned town; among those discussed have been towns with populations of up to a half million.<sup>24</sup>

The major obstacles to any significant beginning in this direction are, first, the multiple difficulties of acquiring large tracts of land (we are talking about thousands of acres) at reasonable cost, and, second, speculation in land which siphons off the value that accrues from planning and community development. It is these problems that make it impossible to provide decent housing in a healthy environment for the millions of low-income families now deprived of this right. Neither of two widely publicized new towns — Reston, Virginia and Columbia, Maryland — despite good intentions, have been able to provide significant housing for low-income people, including those who spend their days working in or building the communities.

<sup>19</sup> The leasing of land only, without structures, may seem to be a novel concept, but this is neither a new nor an uncommon idea. It is used in such dissimilar places as Canberra, Australia; Irvine, California; and part of Baltimore, Maryland. It is a standard way of handling commercial urban land; the corporate owners of many a skyscraper do not own, but only lease, the land upon which it stands.

<sup>20</sup> See Chart 1, Chapter Four, for a diagram that may clarify this distinction.

<sup>21</sup> The concept of the rural new town has its American precedents among the covenanted communities of the earliest settlers of the Massachusetts Bay Colony, as well as among several experiments during the New Deal period. Its structure is largely based upon the *moshav* in Israel. See Shimon Gottschalk and Robert Swann, "Planning a Rural New Town in Southwest Georgia," *Arete* 2:1, Journal of the Graduate School of Social Work, University of South Carolina, Fall 1970. For further reading on the history of the covenanted community in America, see Page Smith, *As a City Upon a Hill* (New York: Knopf, 1966). For an example of a New Deal precedent, see Edward Banfield, *Government Project* (Glencoe, Ill.: Free Press, 1951).

<sup>22</sup> *Current Population Reports*, U.S. Bureau of the Census, Series P-60, No. 77 (Washington, D.C.: Government Printing Office, 1971).

<sup>23</sup> Peter Barnes, "The Great American Land Grab."

<sup>24</sup> The idea behind the rural new town and how it can address the maldistribution of population in the United States is described in Gottschalk, "Rural New Towns: Toward a National Policy" (Cambridge, Mass.: Center for Community Economic Development, 1971). For a report on ways of dealing with social and political issues inherent in planning and developing new towns, see *New Towns: Laboratories for Democracy*, Report of the Twentieth Century Fund Task Force on Governance of New Towns, background paper by Royce Hanson (New York: Twentieth Century Fund, 41 East 70 St., 1971). For additional studies on differing aspects of new town development, see Peter

School of Living; Mitchell Adams of New Community Projects; Griscom Morgan, Community Service, Inc.; David Zarembka for sharing his experience in Tanzania; Robert L. Bard, Associate Professor of Law at the University of Connecticut; Ray A. Hugos and Marjorie Swann for editorial assistance; Richard E. Galantowicz of the Open Space Institute; Professor Raymond J. Penn, Land Tenure Center of the University of Wisconsin; Anne Maxfield, Treasurer of Bryn Gweled Homesteads; and Russell Lewis of Hatfield, Mass.

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For editorial help and encouragement and, most important, for provoking essential dialogue that has helped shape this guide, we want to thank CCED and particularly the following members of its staff: Stewart E. Perry; Geoffrey Faux; Edward Kirshner; Susan Horn-Moo; John McClaughry; and Cynthia Rose, editor for this guide.

#### The Staff

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# Introduction

The story of land is older than the story of man. Land came first; no man created it. Every society, large or small, must devise ways in which its members will share this gift. This is *allocation*.<sup>5</sup> Members of society must also determine under what conditions the land will be passed on to the next generation. This is *continuity*. And they must decide if, when, and how it may be traded with others. This is *exchange*.

The authors have developed this study of the idea of the community land trust because they believe that in our society, if not in much of the world, unsatisfactory institutional answers have been evolved to the questions of allocation, continuity, and exchange. However, there is no claim intended that this one mechanism is a panacea. It is only one idea among many which are needed to restructure our social and economic system in order to produce a world order, not without conflict but without war; not without sorrow but without hopelessness; not without inequality but without inequity.

We are fortunate that today there is heightened awareness of the need to protect and preserve the natural resources we have inherited from the generations that have come before us. But the struggle to provide *continuity* for generations into the future — to re-establish the balance between ourselves and nature — has hardly begun.

## Historical Precedents

The ideas behind the community land trust as formulated in this guide and practiced by experimental community groups today have historic roots largely ignored in conventional histories, which is why we can say the goal is to “restore” the land trust concept rather than initiate it. For example:

*American Indian tradition holds that the land belongs to God. Individual ownership and personal possession of land and resources were unknown.*

The Indian had a respect bordering on awe for everything he could see, hear, or touch: the earth was the mother of life, and each animal, each tree, and each living thing was locked into an interrelated web of spiritual existence of which the individual was a small part. In trying to attune his everyday life to these concepts, the Indian inevitably established a deep feeling of oneness with the world of nature. Implicit in this feeling was what we now call a stewardship approach to the use of land. . . .

It was incomprehensible to the Indian that one person should have exclusive possession of parts of the earth. The warrior chief, Tecumseh, reacted with astonishment to the demands of white buyers: ‘Sell the country? . . . Why not sell the air, the clouds, the great sea?’ . . .<sup>6</sup>

*In New England today, what were once significant areas of community land survive in the form of park areas near the center of a town and in town-owned forests. Originally the town common was made up of large tracts open to all members of the community*



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5 Problems of land allocation fall into two broad categories: the allocation of land among individuals, and the allocation of land among its multiple possible uses. Inequitable allocation of the first type is a major source of injustice among men; inequitable allocation of the second type produces injustice not only among men, but also between all men and nature.

6 Stewart L. Udall (Secretary of the Interior during the Kennedy and Johnson administrations), “The Indians: First Americans, First Ecologists,” *The American Way*, May 1971.

*for animal grazing and sometimes farming. Though inheritors of the Roman tradition of private land tenure, the early European settlers in America were prompted by the severity of their new environment to modify landholding in favor of community ownership.*

*In Mexico, the ejido system of land use — village control over communal lands — was traditional. Villagers had use-rights to commonly owned plots of land in Indian communities. But land was increasingly appropriated by the wealthy and the Church, from the Spanish Conquest through 1910. After the Mexican Revolution, the new government made land reform a major goal. Many lands were returned to Indian villages from which they had been taken. In other cases, villages of landless peasants without traditional title received land. These villagers were given use-rights, without individual title and without the right to sell the land. This progressive land reform effort was only partially carried out, however, and exploitive landholding patterns are still evident.*

*In Africa, common tradition often held land to be the property of no single person or tribe. It was to be shared by all. There were territorial boundaries fixed by custom or agreement; however, within these boundaries land was communally used. Today, Julius K. Nyerere, prime minister of Tanzania, has initiated the program of Ujamaa Vijijini ("familyhood in villages") which represents a return to the traditional landholding concept.*

*In ancient China, during 24 centuries (from 2697 B.C. to 249 B.C.), "land was held not as private but rather as common property. . . . Lands were held by the government [emperor] as a trustee for the general public. . . . The policy of the Chinese government toward land . . . has always been to distribute it as widely as possible among the great mass of people. . . ."7 It was not until the beginning of the Ch'in Dynasty in 221 B.C. that private ownership of land was introduced.*

#### **Evolution and Effect of Land Tenure Practices**

Early peoples throughout the world were alike in their common vision of land as a resource to be held in trust. Today, most of these examples have long since vanished.<sup>8</sup> In the West, the Roman (allodial) land tenure system (prototype of the prevailing system of private ownership of land) has become dominant. Similar patterns prevail elsewhere in the non-socialist countries.

A century ago, America was still largely a land of independent small farmers and homesteaders. Most lands which were not in governmental hands were individually owned by those who cultivated them. For decades the federal government had given away land at almost no cost to anyone who would settle upon it and use it. As long as there appeared to be no limit to available land, America, full of optimism and self-confidence, gained its worldwide renown as the land of opportunity and endless wealth.

7 Han Liang Huang, "The Land Tax in China," xiv *Studies in History, Economics, and Public Law*, Vol. LXXX, No. 3, ed., Columbia University, Faculty of Political Science (New York: Longmans, Green & Co., 1918).

8 "Historically, it was the dispute over the use and ownership of land that caused the white-skinned immigrants to ignore and cast aside the lessons of Indian ecology. The Western European immigrants were land-hungry. They came from feudal societies where the governing classes owned land outright, fenced it off, and gloried in its exclusive possession. We perceive now that feudal land laws were a serious flaw of Western culture." Udall, "The Indians: First Americans, First Ecologists."

Private ownership of land seemed justified as a practical response to actual historic forces. Fast accumulation of capital through private entrepreneurial exploitation of land and natural resources was an important factor in the quick industrialization of the United States. But whatever the original logic, current economic, political, and environmental problems indicate the Roman system may have outlived its usefulness. As the noted planner, Edgardo Contini, comments:

The heritage of this commitment [to the sanctity of private ownership of land] stems from one of the founding principles of the United States. . . . Ownership of the land that one worked was an essential component of the social revolution upon which our nation was founded. But, as the United States changed from an agricultural to an industrial economy, from a rural to an urban nation, the social significance of private land ownership became, to a large degree, a cover for extracting speculative profits from the pressures of urbanization.<sup>9</sup>

World conditions have obviously changed, and America not the least among them. The system of private ownership of land that led to high productivity and personal independence one hundred years ago has become a major source of economic and social inequity.<sup>10</sup> Private ownership of land is increasingly translated into corporate ownership, and, despite the increase in private homeownership, ever more land is being held in relatively fewer hands.<sup>11</sup> Middle-income families, as they attempt to purchase their homes, are forced to pay inflated prices, and the poor, as always, are almost totally excluded.

Today's poverty, unemployment, and urban misery are in no small part due to the thoughtless malappropriation of rural land which has taken place at an ever-increasing pace over the last century and a half. Profligate and ruinous landbuying and settlement practices have resulted in a monopoly-owned development pattern in the South and West that has not been altered in the last century — except to replace family ownership of many large tracts of land by corporate ownership.<sup>12</sup>

The social effects of maldistributed land have been most manifest in the impoverishment of tenant farmers and sharecroppers in the South. Furthermore, as agriculture becomes more mechanized and comes to be dominated by those who have capital (the wealthiest family farmers and the giant corporations), those families that formerly owned and managed their own farms have largely been driven off. Many have migrated to the cities.<sup>13</sup> Some small farmers continue to survive in poverty where they and their ancestors were raised. Some few are employed by the large conglomerate corporations or the relatively few millionaire farmers who have succeeded in gaining control of vast expanses of the best cultivable land.

Urban problems, too, can be traced to a century of thoughtless distribution of a fast-dwindling resource.

9 Edgardo Contini, "The American City — A Forecast," *The Futurist* 4:1, February 1972. xv

10 In the American South, where the plantation system and slavery reigned for 300 years, there never did exist the "freedom and justice for all" upon which the highest ideals of America were based. In fact, the Southern plantation system was in many ways a forerunner of the modern corporate factory farm.

11 We are not aware of any comprehensive census of land ownership in the United States. It is in most localities extremely difficult to find out precisely who owns what and how much. On a national scale it is even more difficult. With our cultural mania for statistics, perhaps this phenomenon is to be viewed simply as an oversight.

12 Unchecked — and even encouraged — by Congress, the issuance over the years of vast tracts of land to speculators drove up land prices, discouraged settlement by the poor, and resulted in monopoly ownership of America's farmlands. The Homestead Act of 1862, a provident measure adopted by Congress, attempted, albeit feebly, to encourage settlement by poorer families. Under its provisions a family could acquire up to 160 acres if it occupied and improved the land for five years. But by the time it was enacted, a substantial portion of the best land in America was already taken. Even the Federal Reclamation Act of 1902 did nothing to break up massive landholdings even in providing a 160-acre limitation (and residency requirement) for those lands receiving federal water. Land monopoly stayed entrenched in the West through continuing violations. See Peter Barnes, "The Great American Land Grab," *New Republic*, June 5, 1971.

13 The policies of the U.S. Department of Agriculture which favor the "successful" farmer to the relative detriment of the small farmer have accelerated this migration. Over the past decade, an average of 1,670 small farms per week have been lost, according to the *Wall Street Journal*, 11 May 1972.

What had not been foreseen was the impact that land monopoly would eventually have on American cities. If the Southern plantations and Mexican land grants had been distributed in limited-size parcels to actual settlers as generously as it was handed out in prodigious chunks to speculators, if the reclamation law had been vigorously enforced, it is doubtful that the cities would be as overcrowded and beset as they are today.<sup>14</sup>

Within the densely populated urban areas the issue of land allocation is different yet is resolved no more rationally than in the countryside. Speculation for private profit and local politics often determine how land will be used. Near the core of each of our great cities lie vast acreages of dilapidated slum houses inhabited by the poor, the rejected, and the neglected members of our urban communities. While the owners of these slum properties live in comfort elsewhere, their tenants are permitted to camp within these run-down dwellings only until the day the "progress" prophesied by urban renewal approaches fulfillment, and then they are driven elsewhere.

#### Is There a Way Out?

The problems that have arisen as a result of this system of land tenure are more than amply documented by today's media and need not be further elaborated here. What is strange is that although the problems are widely recognized and discussed, very few people question the system of private land tenure that lies at their roots.

In the United States, "land reform" is seldom mentioned, yet is no less needed than in the many less developed nations where it has been an evolutionary — or revolutionary — demand for ages. In most cases, land reform consists of a relatively superficial attempt to redistribute land more widely by breaking up certain very large land-holdings, with small parcels granted small farmers, usually on a private ownership basis.<sup>15</sup>

Private landownership — and its concomitant problems — is accepted as inevitable by most Americans, perhaps because it has stood for so long as a pillar of our ideology, as Contini has noted. Another reason is that there are so few examples of alternatives in the United States (and, for that matter, in the world); those that do exist are not widely known, nor is their significance recognized. Only recently has there been much desire to experiment with alternatives.

We feel that barriers to such experimentation are more psychological than economic or political. Even though government programs and private investment institutions favor private development, there are at this point no tangible legal or economic barriers to the trusteeship approach to land tenure. The community land trust represents a means by which a legitimate alternative institutional expression of landownership may be found, thereby contributing to the much-needed social and economic reconstruction of America.

14 Peter Barnes, "The Great American Land Grab," xvi

15. Such redistribution is, however, more often discussed than implemented. Even where redistribution is implemented on a private ownership basis, the beneficial effect is short-lived. Economic pressures, and lack of credit and know-how continue to exert their pressure on the small farmer, often leading him eventually to mortgage or sell his land outright, with land ownership often returning to something like the original pattern.



The land trust is considered a tool that might help solve these and other problems. As a public or quasi-public body, it could qualify for development of certain public lands, including unused or underused military bases. These are in many cases ideally suited for the development of new towns. Secondly, as a "tax enclave" (see Chapter Two), the town can distribute the tax load in such a way as to let land users pay an equitable share for the advantages of site location and availability of services, basing the tax burden on ability to pay.

The concept of the land trust is of central importance to the rural new town:

Whereas residents will own their homes and the improvements which they make on their individual plots, ownership of the land will rest with the Trust. . . . The effects of the Land Trust will be to 'decommoditize' the land, and thus safeguard the newly independent farmer's right to his property, regardless of the fluctuations of the harvest or the market. The perpetual Trust will guarantee that land cannot be repossessed by creditors in times of hardship. It will eliminate the possibility of land speculation, and absentee landlordism will be permanently avoided.<sup>25</sup>

New Communities, Inc. of Lee County, Georgia, modeled as a rural new town, is the best example of the land trust concept as developed in this guide. (See Chapter Three for a detailed case study of this model.) The rural new town, however, is not considered the only — or even the major — possible application of the community land trust principle. The concept can equally well apply to established communities and the urban setting.

**Urban Land Trust.** The land lease element of the community land trust concept has for years been a common approach to commercial development of urban land in the United States and elsewhere. Considering this tradition, it might not be unreasonable to hope for the establishment of significant urban community land trusts in this country. Any number of community owned or communally owned institutions exist in urban areas today, although these generally consist essentially of buildings and other structures, with the land itself considered secondary in importance. (In Israel, the Jewish National Fund has recently acquired urban land and is holding it according to the community land trust concept, which has had a healthy impact on urban land values and costs to users of the land.)

Numerous opportunities may exist in both the urban and small town setting for community groups or the town itself to assume a trusteeship role with regard to land and property in private use. It has been proposed, for example, that instead of selling land for taxes, municipalities consider assuming title to the land, as has been done in Rockville, Maryland, and St. George, Vermont, thereby reserving it for the broader welfare.<sup>26</sup> Thus, in certain new cities — or when land is developed by existing cities — the government may act as the developer, keeping title to all the land, performing the planning, and

Bass and Edward Kirshner, "New Town Development: Costs, Revenues, and Alternate Sponsorship Arrangements," Master of City Planning Thesis, Department of City and Regional Planning, University of California, Berkeley, 1971. (summary article only, available from Center for Community Economic Development); "New City Prospectus" (Cambridge, Mass.: The Cambridge Institute, 1970). For a study of community-owned new towns and their financing as steps beyond community development corporations, and other forms of partial community ownership, see Edward Kirshner and James Morey, "Community Ownership and New Town Financing" (Cambridge, Mass.: Center for Community Economic Development, forthcoming 1972).

25 Gottschalk and Swann, "Planning a Rural New Town."

26 These two experiments in the area of public ownership of land deserve mention. Rockville, Maryland, a Washington, D.C. suburb, borrowing the technique of private investors, in 1970 purchased a 152-acre farm of which about 40 acres will be given over to industrial development. The city plans to hold the industrial land instead of selling it off, and create an industrial authority to develop and lease the space. Not only would the city continue to profit from the ongoing investment of public resources, but ownership will give the city far better control over the use of its land than it would have through its zoning powers, if the land were sold to a private interest.

Public ownership offers a handhold. By controlling use of the new industrial site the city is in a position to choose the kinds of industries it wants and needs. And being in that position multiplies its opportunities to have a say in the composition of its tax base, social mix of its population, and the future of its environment. (*City*, January-February 1971, pp. 85-86.)

A new approach to land use control and development is also being exercised in St. George, Vermont, where the town took control of certain land resources within its boundaries. Citizens authorized the town selectmen to purchase

leasing parcels to private organizations for development in what is deemed the public interest. This "public utility" concept of urban land is discussed by Edgardo Contini in an article that describes the precedent for non-ownership of urban land: "...land dedicated to urban development [may be viewed] as a public utility, owned and administered by the community itself."<sup>27</sup>

A recent Congressional study on property taxes and their effect on land use explores government ownership of land for orderly planning through the use of "land banks":

Government ownership of land in and around urban areas is a policy pursued in several European countries to aid in directing land development toward the desired goals, i.e., planned growth, housing construction, appropriate open space. Some land banks are common in the Scandinavian countries, and also to some extent in India and Israel.

One of the most extensive examples of this is in Stockholm, Sweden. In the early part of this century the city purchased a major part of the open land within its borders and in adjacent suburbs. The suburban land purchased became part of the city.

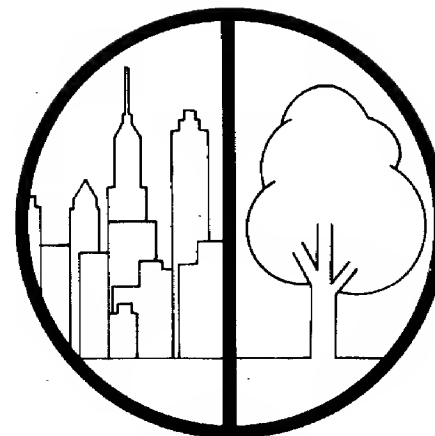
This land may be developed by governmental, nonprofit, or private developers, but it is leased, not sold. The annual rental is set at 4 percent of assessed value, subject to indefinite extension but with renegotiated rentals.<sup>28</sup>

In such a land bank the government might perform the trusteeship function. In the United States there have been moves in this direction: in the 1930s, under the Federal Resettlement Administration, land trusts were tried but were unsuccessful, partly because of "top down" administration but also because of political pressure. The community land trust, however, is a nongovernmental institution, with the primary impetus evolving from the bottom up, and more directly from the people.

### Political Dimensions

The concept of the community land trust has political implications for certain groups of disenfranchised Americans. There are a number of (largely unrealized) opportunities for land trusteeship within established communities or ethnic groups. Of particular note are the efforts of certain groups of Indians, Alaskan Eskimos, and Mexican-Americans to retrieve large tracts stolen from them by white settlers.

Return of these lands might be more politically feasible through the mechanism of a community land trust sponsored and controlled by the original and rightful holders of the land. The issue is political, and political action on the federal level is required. In many cases, large sections of this land have been taken over or deeded to non-native peoples and corporations. These groups could be offered long-term leases, which would provide a continuing source of income to the native or Mexican-American trustees.



48 acres of prime, commercially developable land within the town limits, and then used the Vermont zoning statutes to zone the rest of the town as residential. The town thus became the sole owner of the only commercial property, assuring that any future development would be under the complete control of the town planning commission. (John McClaughry, "Town CDC," *Community Economics* [Cambridge, Mass.: Center for Community Economic Development, May 1972].)

27 Edgardo Contini, "The American City."

28 From *Property Taxation: Effects on Land Use and Local Governmental Revenues*, a background study prepared by the Congressional Research Service for the Subcommittee on Intergovernmental Relations of the Committee on Government Operations, U.S. Senate (Washington, D.C.: Government Printing Office, 24 February 1971), p. 53.

Such efforts to reclaim large tracts of land linked with a return to traditional tribal (communal) landholding hold forth the promise of significant experiments in the spirit of the community land trust.

**Indian Tribal Lands.** Among the several claims for restoration of Indian lands is that of the Pit River Indian Council, which is reclaiming title to 3 million acres of tribal lands in northeast California. This tribe was forcefully removed from its land in 1953 and most of the land is now held by the federal government and large corporations. In response to the Indian claim, the government in 1963 offered 47¢ per acre. The tribe rejected the offer, issuing a proclamation that stated in part:

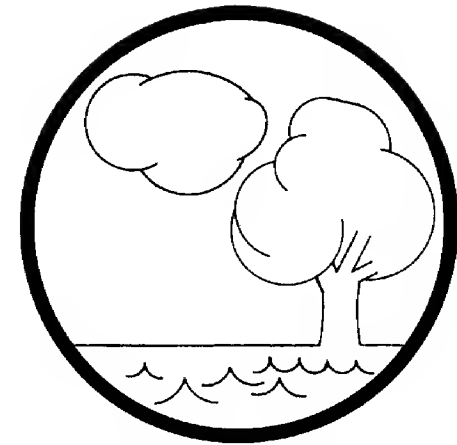
The Pit River Indian Tribe has voted unanimously to refuse the payment under the California Land Claims Case now being prepared for settlement. We believe that money cannot buy the Mother Earth. . . . We are the rightful and legal owners of the land. Therefore, we reclaim all the resourceful land that has traditionally been ours, with the exception of that 'owned' by private individuals.

On this land we will set up our own economic and social structure, retaining the values that are commensurate with Indian life. We will encourage and help other Indian tribes and groups to establish similar structures across the country. . . .<sup>29</sup>

As of this writing, the tribe has not yet succeeded in reaching a satisfactory settlement on this claim, although they have expert legal counsel and are working toward a compromise agreement to obtain corporate support in a legislative effort to reclaim a portion of the traditional holding.

**Mexican-American Claims.** There is considerable effort today devoted to reclaiming traditional Mexican-American land that has been taken over by white Anglos or by the U.S. government in New Mexico, Arizona, and California. Perhaps the best publicized of these efforts is that led by Reies Lopez Tijerina working through the Alianza in New Mexico. The Alianza is claiming thousands of acres, especially in northern New Mexico. In one case, near Tierra Amarilla, an area that had been used traditionally by Mexican-Americans for common hunting, fishing, and recreation has been appropriated by Anglos from Texas who have staked out several thousand acres, fenced them off, claimed title (since no private title existed previously), and are charging a tariff for the privilege of entering to hunt or fish. So far no settlement has been made.

**Alaskan Land Claims.** The native peoples of Alaska — Indians, Aleuts, and Eskimos — have claimed a good portion of that state's 375 million acres as their traditional territory. Unlike the Mexican-American and Indian land claims, a settlement of sorts has been made by Congress — primarily because of the government's eagerness to exploit the North Slope oil fields.



29 Pit River Indian Council, *Resurgence*, November/December 1970.

The battle was not easy, even with justice and the oil discovery on the side of the native peoples. Working through the Alaska Federation of Natives (AFN), a major lobbying and legislative effort was mounted — at a cost of \$600,000 — and on December 14, 1971, the House and Senate approved a bill that confirmed native title to 40 million acres and authorized almost \$1 billion in compensation for the rest of the claimed territory.<sup>30</sup> About half the money will be paid by the state from future oil revenues, and the balance by the U.S. Treasury over an 11-year period. The land will be used primarily to support those villages still relying mainly on hunting and fishing for survival. The money will be administered by 12 native corporations and used to build housing and as seed money for local businesses.

This is no doubt the largest settlement of this type and, if honored, will result in preserving 50 million acres for use under the traditional approach to landholding — i.e., on a communal basis. It also furnishes capitalization for what might be the most significant cooperative economic venture organized so far in the United States.

<sup>30</sup> See, for a discussion of this bill, Stewart E. Perry and Mark Frankena, "Land Title for the Alaska Natives and Their Economic Development" (Cambridge, Mass.: Center for Community Economic Development, 1971).

## Chapter Two: Experiments in Community Landholding

The examples of land trusts and related experiments described in this chapter are for the most part not remarkably significant as models of the community land trust in its pure form. What is important is that each illustrates one or more elements of the community land trust concept and proves that, in fact, it *can* be done, even within an alien legal and economic framework. (Where there have been failures — and there have been many — they are perhaps caused more by internal problems than by external pressures; establishing a community land trust depends mostly on ability and the will to make it happen. Keeping it going depends upon maintaining that internal momentum.)

To describe or even survey the many historical and contemporary experiments related to the land trust concept would fill a book in itself. Right now it would seem more useful to outline the general types of experiments or movements — both foreign and domestic — in the direction of alternate, or “ethical,” land tenure, illustrating the broader concepts of common ownership, trusteeship, or tax enclaves, and in the latter part of the chapter briefly present several experiments in the United States that may be seen as particularly relevant to the model of the community land trust.

### Foreign models.

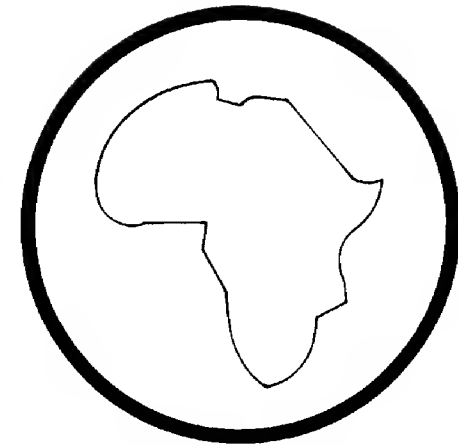
Insofar as the community land trust concept applies to the problem of redistribution of land for the common welfare, the various efforts (mostly in other countries) in land reform are relevant. In these cases, new landholding patterns have been implemented in existing communities.

In the socialist countries, land is usually appropriated by the central government and allocated in what is judged to be the common national interest. When done within a framework of decentralized control, this might be considered in the spirit of the community land trust concept. Probably the best example is Tanzania, as described below.

**Ujamaa Vijijini.** In the traditional societies of the African tribes of Tanzania, no individual owned land; instead each had the right to use what he needed to grow sufficient food. When a man wanted a plot of land, he went to the chief, elders, or clan leaders, and asked for an appropriate piece which would then be allocated to him. The shifting cultivation practiced at that time meant that the users of land were moving from place to place every few years as the nutrients in the soil became depleted. As soon as a field was abandoned, another person had the right to cultivate there or graze his cattle.

When the German and, later, British colonists came to what is now Tanzania in the late 1800s, they introduced the European concept of “ownership” of land. Land began to be bought and sold, perpetual deeds issued, and speculation started, particularly in and near the major towns.

Julius K. Nyerere, prime minister of Tanzania, in 1967 called for a return to the traditional landholding concept in his program of *Ujamaa Vijijini* (“familyhood in villages”):



The African's right to land was (traditionally) simply the right to *use* it; he had no other right to it, nor did it occur to him to try to claim one. The foreigner introduced a completely different concept — the concept of land as a marketable commodity. According to this system, a person could claim a piece of land as his own private property *whether he intended to use it or not*. . . .

The Tanganyikan African National Union government must go back to the traditional African custom of landholding. That is to say, a member of society will be entitled to a piece of land on condition that he uses it. Unconditional, or "freehold," ownership of land (which leads to speculation and parasitism) must be abolished.<sup>31</sup>

In 1967-68, when the Nyerere program was implemented, all land was nationalized and land speculation died. Land belonged to all the people but could be held only under the condition that it be used. Land left unused could be taken by any interested group or individual. Tanzania might therefore be considered a *national* land trust.

**Ejido.** One of the best examples of the gradualist, or nonrevolutionary, approach to land reform combined with local village trusteeship is the Mexican *ejido* ("village lands") system. According to Matthew Edel, a student of the village land system in Mexico, this form of community control of village lands is now practiced in more than 20,000 villages. Edel writes:

Community control, through the *ejido*, was replacing landlord rule. Community institutions were to bring about economic progress without the problems usually ascribed to industrialization. Communities controlling their own lands would liberate and preserve the village as an 'organic, breathing entity'. . . . The villagers themselves clearly wanted it, for they flocked to petition for their communal lands.

Under the agrarian code, land is redistributed only when a village asks for it. Within the community, those with less than a minimum amount of private property organize themselves into an assembly, sign a petition for land, and select an executive committee to represent their claim. They are entitled to receive either restitution of lands usurped from their village before the Revolution, or donation of any lands from farms of excess size within seven kilometers of the village. The land is taken from the former owner without compensation, leaving him only a medium sized family farm as his remaining property. The village also receives the new land as its *ejido* free, but only after complicated administrative proceedings. . . .

The recipient community normally divides the *ejido* into parcels for each family. . . . Each resident is supposed to cultivate his parcel every year per-

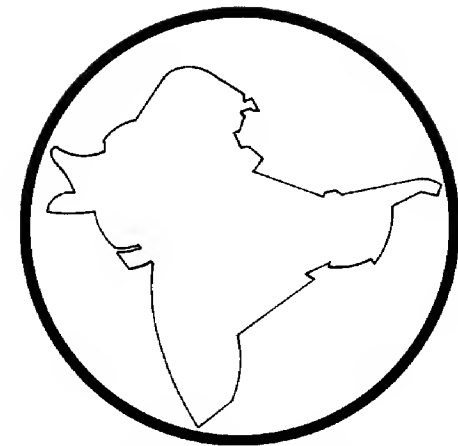
31 *Seeds of Liberation* (a compendium of articles from the magazine), ed. Paul Goodman (New York: George Braziller, Inc., 1964). 8

sonally. He may pass it on to his heirs, but he may not sell it. If he abandons his land, it reverts to the community, and the *ejido* committee reassigns the parcel. Legally, an *ejido* parcel is a very complex form of property, with the individual (land user), the *ejido* committee, and the state all in some sense possessed of partial property rights to it. In effect, though, the *ejido* committee is the most powerful "owner." This governing body is elected by the members, and charged with . . . supervising the division and use of the land, and collecting the members' annual dues to a communal fund for expenses and local public works.<sup>32</sup>

**Gramdan.** The Indian *Gramdan*,<sup>33</sup> or "village gift" movement, compares with the *ejido* as an example of a deep-reaching approach to land reform. *Gramdan* is often mentioned as significant, but there has been little in-depth study of it in the United States, and its dynamic leaders remain relatively unknown. An extension of the Gandhian movement, *Gramdan* is dedicated to the development of a new India on a decentralist, village basis. Originally a "land gift" (*Bhoodan*) approach was used, in which small farmers were given title to land on an individual, private basis. It soon became evident that this was no long-range cure (since many of these new owners succumbed to the first opportunity to sell the land when a good offer was made by some wealthy landowner — a fate shared by most government-induced land reform programs). In the *Gramdan* that evolved, the village served as trustee of the land on behalf of the whole community, granting individual use-rights to the land. The *Gramdan* movement now involves more than 18,000 villages in India.

**Jewish National Fund.** The Jewish National Fund<sup>34</sup> is perhaps the best example of an existing community land trust. It is a public but nongovernmental institution comprised of trustees who hold title to land in Israel. Land is leased to those who can use it in keeping with the long-range public interest. Much of the land is agricultural and is leased to collective ownership communities (*kibbutz* or *moshav shitufi*) or cooperative smallholders' settlements (*moshav ovdim*), although urban land has recently been acquired and is also being held in accordance with the land trust concept. The Fund observes the important principle of distinguishing between the land and natural resources, and man-made property externalities, granting leases on the land only.

The Jewish National Fund has been in existence since 1901, thereby offering experience over a period of several generations of working out problems of inheritance, handling disposition of immovable man-made property when users choose to move, working out leases and appraisals, and planning over a long period in which land values appreciate. It operates on a gradualist basis, purchasing land from titleholders at market value, and is quite large, now owning about 60 percent of the reclaimed and cultivated land in Israel. The Fund offers an example of the healthy impact on a national economy when this proportion of the land area has been removed from the private speculative market.



32 Matthew Edel, "A Lesson for Community Control in the United States," *Cambridge Institute Occasional Bulletin*, No. 1 (Cambridge, Mass: The Cambridge Institute, October 1969).

33 For a useful monograph on the *Gramdan* movement, see Erica Linton, *Gramdan — Revolution by Persuasion* (London: Friends Peace and International Relations Committee. Available from the American Friends Service Committee, 48 Inman St., Cambridge, Mass.)

34 There are several reasons why the Jewish National Fund is not being emphasized in this guide. First, it is such a large-scale land trust that the reader might forget the concept is one which is applicable to many types of decentralized, small experiments. The second problem, as far as this guide is concerned, is that the Fund is in a unique position as a recipient of vast amounts of money from the worldwide Zionist movement, a condition which of course cannot be duplicated elsewhere. Finally, it is unique in that it preceded the formation of the government of Israel, and therefore the legal system that developed had to accommodate the philosophy of the Jewish National Fund, rather than vice versa. Nevertheless, throughout this guide there will be frequent references to the Fund since within its experience lie the answers to many of the questions and reservations often raised in connection with the community land trust concept.

Many of the community land trust concepts are based on the development experience of Israel during the past 70 years. Through use of the leasehold system, Israel has been one of the few countries in the world to be successful in preventing the process of uprooting the poor tenant farmer from taking place. The leasehold system has brought security of land tenure to the small farmer and his family, and has prevented the control of land by absentee landlords, speculation in land, and exploitation of farmworkers by a landowning class.

#### **American Experiments**

Over the past one hundred years or more there have been in the United States numerous experiments in community that relate to what we define as the community land trust idea. These experiments — historical and contemporary — will be surveyed below. Each is significant in some way: as a precedent of the land trust model; as a living example of certain aspects of the model; as a potential physical component of some future regional land trust network. What is unfortunate is that their legacy does not include a large pool of land which might be incorporated into land trusts of significant scale. One hope for the land trust concept is that it can serve as a framework that will help isolated experiments achieve the kind of continuity required for long-range historic significance — but it must be recognized that a strong foundation or legal structure alone is no substitute for the internal dynamism or energy of the participants.

**Intentional Communities.** Throughout the nineteenth century in the United States there were a series of “utopian” community experiments. Some might be described as primarily philosophical, such as Fruitlands, the short-lived Transcendentalist experiment in Harvard, Massachusetts, led by Bronson Alcott and Ralph Waldo Emerson. Others were religious or industrial, such as the several Shaker communities, or Oneida, New York. These communities are described in detail in *Heavens on Earth*.<sup>35</sup> They are not, however, particularly significant to the land trust concept since they were not primarily concerned with landholding as an economic problem.

Akin to the idealistic experiments of the nineteenth century were the numerous “company towns” which flourished in that era, most notably those built by the large textile mills. These were some of the first true “planned” communities in this country, and were characterized by the absence of individual ownership and the presence of a trusteeship function (in the form of the company). Despite these similarities to the community land trust, and certain parallels with the utopian communities of the same period, these towns illustrate that the mechanisms alone do not necessarily ensure the development of humane community; the mechanisms can be considered essentially neutral, to be used for the common welfare or only for private gain.

**Religious Communities.** Contemporary religious or mystical communities might be considered to some degree instructive since a number of them continue to grow and flourish as islands of communal ownership in an economic sea of private ownership,

35 Mark Holloway, *Heavens on Earth* (New York: Library Publishers, 1951).



demonstrating that there are no insurmountable legal, political, or economic barriers against communities based on a completely different system. The contrast is in the incentive: these groups are fueled primarily by the impulse toward spiritual salvation, the community land trust by that of economic salvation.

Among these religious groups are a number of energetic and growing rural communities, such as the Hutterites in the United States and Canada; and the Dukhobors in Canada. The Society of Brothers (Bruderhof) has rural communities in New York, Connecticut, and Pennsylvania, with a large part of their income derived from community manufacture of quality hardwood toys (Community Playthings). Koinonia, with 1,400 acres near Americus, Georgia, is now thriving after many years of boycott and harassment because of its interracial character. A group of American Quakers established Monte Verde in the highlands of Costa Rica. Its dairy industry is doing well and the community seems to be surviving and growing.

Another group of communities, or communes, which might be considered religious, are those based on a mystical cult or individual personality. These, however, are probably less significant in terms of this guide since they have not yet had time to become permanently established (which may indeed never happen) and because, like the monastic religious communities, they do not generally have an internal economic basis but rely upon cash donations from the outside. The Brotherhood of the Spirit after several years shows signs of taking root in Warwick, Massachusetts, and continues to grow. The Mel Lyman Family has a well-established community atop Fort Hill in Boston, consisting of a group of adjacent houses, and has recently purchased 280 acres of farmland near Marysville, Kansas, and a \$160,000 mansion in Los Angeles.

**Tax Enclaves.** Communities of "economic rent"<sup>36</sup> (land rent based on site value) or "tax enclaves" are based on the single tax principles of Henry George. Other aspects such as cooperative work and fellowship may be present but are normally considered as secondary. The keystone of Henry George's single tax principle is the concept of "site value":

In order to make land available [to all], the accumulation of undeveloped land. . . could be made unprofitable by the government taxing the property to its full site value [its value derived from the community]. . . . The principles of the single tax enclave have been experimented with on some dozen enclaves in this country. These enclosures are corporations to which the landholders pay a ground rent on long term leases, generally for 99 years. All improvements and enterprise are untaxed. . . . Fairhope, off Mobile Bay, Alabama; Arden in Delaware near Wilmington; Free Acres near Summit, New Jersey; and Tahanto at Harvard, Massachusetts, are some of the notable single tax colonies. Tahanto, founded 25 years [ago], now grown to 784 acres with over 50 leaseholders, is a typical enclave.<sup>37</sup>



36 The definition of "economic rent" traditionally refers to payment made for the use of the land. What is paid for the use of improvements is not rent in the narrow sense but rather interest on the value of the improvements.

37 *Enclaves of Economic Rent for the Year 1933* (Being a Compendium of the Legal Documents Involved together with a Historical Description by Charles White Huntington) published by Fiske Warren, Harvard, Mass., 1934. Since the publication of the above text, several other communities have been established with this emphasis, including those at Suffern, N.Y.; Bryn Gweled Homesteads, Pa.; and Van Houton Fields, N.Y. In the case of some of the earlier tax enclaves, title to the land was held by trustees, as Tahanto was. Bryn Gweled and similar modern enclaves are nonprofit corporations with all residents voting as members.

Site value taxation (also called land value taxation) is designed to shift the tax burden to the land, which is "valued in terms of its potential higher use if it were to be developed or redeveloped for such higher use." This tax principle is based on the fact that land values rise primarily because of population pressures and services (such as roads and sewers) made available by the municipality. Since the private landowner has not been responsible for this increase in the value of his land, "the gains should be taxed away for the benefit of the population whose growth caused the increase in values."<sup>38</sup> Carried to its extreme, there would be a 100 percent tax on the site value, and none on buildings or other improvements. This is the single tax advocated by Henry George.

The ideas of site value taxation and economic rent are commonly associated with the community land trust concept. Although land rents in a trust need not be based exclusively on the site value principle, the theory is instructive and relevant. It places emphasis on land as the source of wealth, and there is indication that either within a large tax enclave or as the basis for general tax reform it could lead to better utilization of land and more just placement of the land tax and rent burden.

**Homesteader Communities (Single Tax Emphasis).** Ralph Borsodi, advocate of the idea of trusterty, is an activist as well as theorist and has pioneered several communities based on the single tax principles of Henry George. The School of Living was founded and carried on by Borsodi at the new community in Suffern, New York. In 1945, the School moved to Brookville, Ohio, and since then has been guided largely by Mildred and the late John Loomis.

The School of Living has been advocating ethical land tenure and other concepts related to the community land trust for many years.<sup>39</sup> Mildred Loomis describes the formation of the Borsodi-related homestead communities as follows:

In the 1930s Borsodi made an effort to rehabilitate the unemployed in Dayton, Ohio, by getting families onto small homesteads on a group purchase basis. Complicated by financial problems and government supervision, it had limited success. . . . However, the importance of the effort was widely discussed and the plan put into effect by homesteading communities formed by Borsodi in 1937-39 as an outgrowth of his new School of Living in Suffern, New York.

Van Houton Fields Community (of 35 homesteads) and Bryn Gweled Homesteads (80 homesteads) near Philadelphia were formed and still flourish today. In each case a small group of families came together in a common effort to establish themselves on small homesteads. They pooled their funds, and engaged a lawyer to help them form an association and secure the land.

Thus Homesteading Associations secured land and held it in the name of

38 Quotes on site value taxation are taken from 12 *Property Taxation: Effects on Land Use and Local Government Revenues*. This booklet also contains a good survey of the American experience with land value taxation. An extensive evaluation of site value taxation can be found in Dick Netzer, *Economics of the Property Tax* (Washington, D.C.: Brookings Institution, 1966), pp. 197-212. For a rather brief but thorough description of economic rent and site value taxation, see Lord Douglas of Barloch, *Land-Value Rating* (London: Christopher Johnson Publishers, Ltd., 1961). The author is chairman of the British section of the International Research Committee on Real Estate Taxation.

39 *Green Revolution*, the newspaper published by the School of Living since 1943, is now published at the School, Heathcote Center, Rte 1, Freeland, Md. 21053.

the “project” as a whole rather than cutting it up and deeding it to individual families. Land was leased by members, who were taxed according to their site value and not penalized for improvements, and who owned their own homes free and clear within ten years.<sup>40</sup>

Bryn Gweled Homesteads is a contemporary, functioning example of an effort to apply at least some aspects of the community land trust idea. On the surface, the community appears to be a typical, attractive suburban development; any “revolutionary” aspects are buried deep within the community structure. (See Appendix 1c, 2b, 3 for further details on the Bryn Gweled community.)

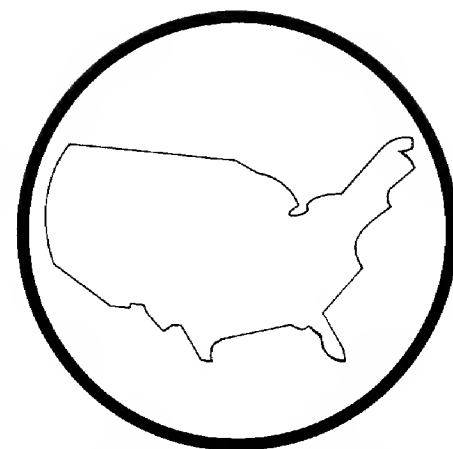
**New Community Trust.** A Boston, Massachusetts program that contains a number of elements of the community land trust concept has been initiated by Interseminarian, Inc. “Intersem” is a nonprofit corporation that sponsors several service programs, primarily for the youth community. The best-known of these programs is Project Place, a drop-in center and drug counseling service.

The Intersem community leased a large farm in New Hampshire as a retreat center and then initiated a program to acquire this and other properties through the New Community Trust. An offering of \$20,000 in 6-1/2 percent Subordinated Notes (see Appendix 4) was successful and permitted the purchase of the farm. Recently a second property, Healey House, was acquired in Somerville, Massachusetts. This urban center now houses ten Project Place volunteers and, with planned renovation, will house an additional six.

This effort, consisting of two scattered sites now with more anticipated in the future, is significant as an example of urban property placed under the umbrella of a trust which encompasses a larger area. It does not entirely conform to our model since the land is not separated from the man-made structures thereon.

**Morningside Gardens.** Another example of a model somewhat resembling the land trust concept but in the urban setting is a cooperative housing development such as Morningside Gardens (Morningside Heights, New York, N.Y.). This complex consists of six 20-story buildings between 121st and LaSalle Streets in upper Manhattan. It was built with federal financing under the sponsorship of an association of ten cultural and educational institutions in the Morningside Heights area (Riverside Church, Columbia University, Jewish Theological Seminary, among others).

In some respects it resembles the public, low-income housing project the property abuts; in other respects, it resembles a typical urban condominium development. But there are key differences that make Morningside Gardens a singularly important community: it is owned and operated by the people who live there within certain very important guidelines set up by the original founders. First, cost of the units is fixed and, regardless of rising rentals elsewhere in the city, cannot be raised on a speculative



40 This experiment is described in detail in Ralph Borsodi, *Flight from the City* (New York: Harper & Row, Harper Colophon paperback, 1972).

basis. No renting is permitted and if someone leaves he can receive only the amount he invested (around \$2,500 for a typical unit). In other words, ownership and use cannot be separated.

Second, although tenant selection is implemented through a committee (elected by the owners), it is done so according to guidelines spelled out by the project organizers. The goal is to encourage continuity and provide a healthy mix of different races, income levels, and age levels. There are special programs for assisting the elderly. Twenty percent of the tenants must be nonwhite. Although there is a waiting list of several years for the project, former tenants always are at the top of the list.

Operating costs are collected from residents and are well below most other nonsubsidized housing in the city. Of the typical \$125 per month charge, half is debt financing and the rest for common services. Owners may deduct that portion used for interest payment from their income tax the same way homeowners can. The investment cannot grow; there is no speculation. (Yet this does not deter demand, as illustrated by the waiting list.)

Morningside Gardens offers a unique feeling of "community." There are many programs and service activities: a shop and sewing area; child care on a cooperative basis; a chorus. The project is owned and controlled by the residents within the overall context spelled out by the founding institutions (which is the function of the trustees in the community land trust.) In the midst of serious urban decline, the project illustrates how a community can prosper when founded on sound economic principles.

**New Communities, Inc.** As of this writing, New Communities, Inc. of Lee County, Georgia, is the largest, if not the purest, example of a community land trust in the United States.<sup>41</sup> NCI consists of about 5,700 acres of good farmland and a number of buildings. Lack of funding has slowed development, but plans call for the settlement of up to 800 families on the land in several community clusters. Educational programs and commercial farming on a significant scale are now underway.

NCI plans to turn over all control and ownership of the community, except for the land itself, to the people who actually settle it. The land will remain in trust in perpetuity for its settlers — a concept similar to the land tenure system practiced by the Indians, the African custom of sharing land, and more recently, the *Gramdan* movement in India of land gifts to villages as common property.

**Homestead and Commune Movements.** One of the most heartening and realistic responses to the problems of today's industrial society is the literally thousands of people who in the last ten years have returned to the land to find alternatives to traditional lifestyle and economic patterns. The homesteader and rural communes they form are generally based on the same values, the same feeling for the land, as the community land trust, yet they have for the most part not thought beyond the idea of

41 Details on the founding of this community 14 are given in the following chapter.

“common ownership” to that of “ownership for the common good.” Reaction to the latter concept is almost always positive, which is not surprising since in addition to sharing the same values those establishing a homestead community are also faced with the problem of setting up a legal entity to accommodate their values. And, in some cases, the land trust as a public body dedicated to social ends holds forth the hope of obtaining access to land use without having to build up a personal financial stake.

The land trust idea can indeed speak to each of these concerns. In addition, it lends strength to the larger movement: aligning a group of individual communities under the umbrella of a trusteeship organization would lead to the creation of a *regional land trust*, which could provide both political force and economic strength to benefit all those involved. The regional trust could better perform the function of resource allocation within the broader geographic framework and, perhaps most important, would foster the continuity and growth of this movement.

The possibility of basing a regional land trust on existing homestead communities or communes is described more fully in Chapter Eleven. Its significance at this point is to illustrate that the whole can be greater than the sum of its parts.

## Chapter Three: One Experiment: Organizing New Communities, Inc.

One of the more common questions in connection with the land trust concept is: How do you get started? One way to answer this is to offer the general guidelines presented in Part Two of this guide. Another way is to present in some detail how a specific land trust was actually started, which is the purpose of this chapter.

The particular example of New Communities, Inc. is used for several reasons. First, it is an example of an application in the United States of some of the important principles used overseas by the Jewish National Fund. Second, the authors were intimately involved in getting it started and so can speak from first hand experience.

We should stress, however, that we are not trying to create the impression that this is the only model for a community land trust but instead to show how one group met certain key issues and problems.<sup>42</sup> The applications are, of course, much broader. As a community land trust NCI is a tentative, experimental model, with no assurance as of this writing that it can survive and grow into the community envisioned.

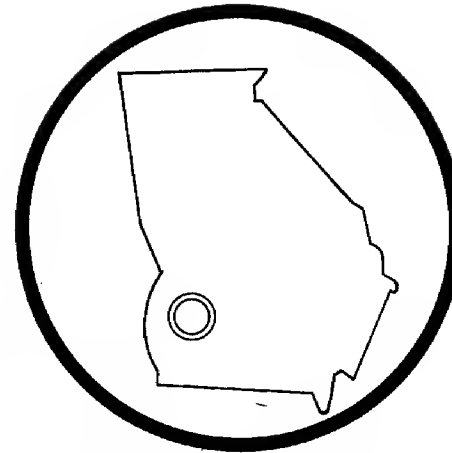
### **New Communities, Inc. — The Early Years**

The story of New Communities, Inc. begins with a man who was born in Albany, Georgia, attended Oberlin College, returned to help his father run a small grocery store, started his own real estate business, and then became involved in the civil rights movement of the early 1960s. Slater King was one of the leaders of the 1962 "Albany Movement," when Martin Luther King brought Southern Christian Leadership Conference (SCLC) staff and workers to Albany to nonviolently challenge the iron grip of legally sanctioned racial segregation in this Southern community.

From a concern with civil rights, Slater King moved to issues of economic justice. In these efforts he was joined by Charles Sherrod, the director of the Southwest Georgia Project, the rural counterpart of the Albany Movement, in nine adjacent counties. Sherrod, trained for the ministry, had moved to southwest Georgia in 1960, during the early days of the Student Nonviolent Coordinating Committee (SNCC), as a rural community organizer.

In June 1968, under the leadership of these two men and with the sponsorship of the International Independence Institute and the National Sharecroppers Fund, a group of eight civil rights leaders from the South (Charles Sherrod; Slater and Marion King; Faye Bennett, executive secretary of National Sharecroppers Fund; Robert Swann, International Independence Institute; Albert Turner, coordinator of SCLC in Selma; Lewis Black, a board member of the Southwest Alabama Farmers Cooperative Association; and Leonard Smith, regional director of National Sharecroppers Fund) traveled to Israel to study land tenure practices and learn about the solutions to problems of rural settlement that had been developed in that country.

These eight people had all known one another through work in the Southern civil rights movement. Except for Sherrod and King, they had worked with the National



16

42 In the following account of how New Communities, Inc. was organized and financed, we have attempted to be as specific as possible. Much of the following material has been extrapolated from accounts of meetings. Quoted material has been excerpted from meeting transcripts.

For additional information on the founding of the community, see Gottschalk and Swann, "Planning a Rural New Town."

Sharecroppers Fund and all felt the need to deal with the problem of land, after which the issues of housing and economic justice could follow.

A family friend of King's, a philanthropist who believed in their community concept, offered financial support for the venture and on the basis of this King was able to get a New York foundation to put up the money for the trip. (Unfortunately, the death of the philanthropist two months after the return from Israel greatly dampened the financial hopes of carrying on and generating broader support for the movement.)

The participants returned in July, enthusiastic about experimenting in the South with a method of land tenure for landless sharecroppers and tenant farmers similar to the *moshav shitufi* type of settlement in Israel that provides small plots for individual farming as well as encourages cooperative farming. The *moshav* model was selected as a guide for the land tenure model rather than the *kibbutz*, since the group felt the importance of maintaining the integrity of the individual family.

A variation of the *moshav* that the organizers hoped to adapt to a new community in this country would permit individual families to cultivate small plots of land on their own and also farm large tracts of land on a cooperative basis, thus increasing efficiency through mechanization. Unlike the *kibbutz*, however, individual families would receive portions of the profit from the cooperatively farmed land on the basis of the hours they work. The remainder of the profit would go toward the development of the entire community.

The enthusiasm of the group was reinforced by W.H. Ferry, a friend of King's at the Center for the Study of Democratic Institutions in Santa Barbara, California, who arranged a conference at the Center in September on the ideas of alternate land tenure. The conference was successful and well-attended, and succeeded in its purpose by giving the concept more legitimacy (and exposure) and moving the idea ahead.

### Exploring the Feasibility of a Land Trust Program

Invitations to a July meeting to share ideas were extended to every key leader, organizational affiliate, and interested individual, resulting in a good representation of almost every Southern organization concerned with the land problem of blacks. Among those attending, who later became members of the ongoing planning group, were: Father A.J. McKnight of the Southern Cooperative Development Program (later to become the Federation of Southern Cooperatives); James Mays of Mississippi, a field director for National Sharecroppers Fund and later a member of the permanent board of NCI; Charles Prejean of the Southern Cooperative Development Program; James Wood and John Lewis of the Southern Regional Council; William Peace of the Southern Rural Project; and Leonard Smith, Southern Regional Director of the National Sharecroppers Fund. The meeting was held in Atlanta at a hotel, to avoid either political or organizational bias.

### **Form of Ownership: The Leasehold Principle**

The initial discussion on land ownership raised both question and concern over the issue of control and of lease arrangements. The idea of the leasehold principle — and trusteeship — can be expected to be resisted by individuals who have never had the chance to own land. Members of minority groups who have been excluded from land ownership over the years see ownership as the only way to gain control of both land and their own lives; the demand for “local control” is thus understandable in reaction to generations of exclusion.

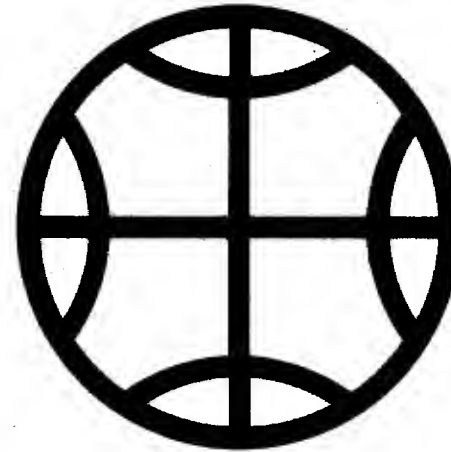
Convincing some of the more militant blacks that the leasehold system was not antithetical to black control and ownership and that such a system could — and, indeed, would — provide land tenure security presented a problem. The concept of land ownership and private property was and is strong (even though ownership is usually only nominal, with land often mortgaged by poor farmers and then lost to creditors). Although history has shown that the leasehold principle is needed to keep people from losing their land; to prevent land speculation, absentee ownership, and exploitation; and to assure land utilization for maximum usage, people would need time to learn to accept this form of land tenure.

It was agreed in the meeting that there would be no subleasing permitted and that the land should be used productively to earn a living. The leaseholder would only lose his lease if he did not use the land productively; he would not lose his equity in his house or other buildings and equipment, as would be the case under forfeiture of a conventional mortgage.

The meeting uncovered additional problems: many of the people farming Southern land are old and any new program, to be effective, would have to encourage younger people to stay on the land or return to it. Basic needs in the rural South are land, decent homes, and a means of making a living. These have to be provided immediately to attract future residents. Other necessary services would evolve after the people met their basic needs.

A further exploratory meeting on leasehold arrangements in September adopted the following four motions:

1. The leasehold principle is paramount and basic to the land trust in the rural South; there shall be a National Board of Trustees which will hold all acquired land in trust. The Board will include in its membership users of the land, including present land owners and non-owners and representatives of nonprofit organizations; and that the Board will select and hire the necessary experts, who will, in consultation with the users of the land, submit plans pertaining to the productive and economic use of the land. If conflict in selection of plans occurs, the will of the users of the land will prevail.





2. The local group (users of the land) shall have the final decision in all areas of consideration pertaining to their own livelihood, except for basic principles specified here and elsewhere.
3. The basic purpose of the leasehold agreement shall be for the purpose of developing communities. However, this does not preclude the possibility of leasing plots to individuals.
4. The land will be leased to each family in the community on an equitable basis; the size of the plot will depend on the productivity of the land; leased land must be used productively.

The motions listed above are considered major principles of the leasehold agreement and cannot ever be changed without destroying the hallowed principles embodied.

#### **Preliminary Organizational Structure**

The early structure of the board was casual and flexible, carried over from the civil rights movement. Everyone who participated was automatically a member of the board. This flexibility played a role in structuring the community and continues to affect its operation with both positive and negative effect. It created what might be ideal conditions for participatory democracy since everyone present at a meeting could vote, but it was difficult to arrive at a "legal" decision because members were not identifiable.

At the September meeting on leasehold arrangements a three-phase program was proposed that would provide a preliminary organizational structure and actually launch the land trust movement. The phases offered and adopted were:

**Temporary Board (Pro-Tem).** Everyone who is now participating, and wants to serve, would become a temporary board member. Committees would be selected from this board, which would serve until a permanent board could be selected (approximately 6 months), and land options would be sought during this period.

**Permanent Board.** A permanent and more representative board would be selected in approximately six months. This board would include local people. Actual field work to organize groups of people would begin. Work on planning communities would begin.

**Total Involvement.** Potential users of the land would become involved in selecting plans and arriving at other arrangements which would affect their lives under the leasehold arrangement.

The following committees were selected and immediately became functional :

**Legal.** Purpose: to work with attorneys toward incorporation.

**By-Laws.** Purpose: to develop by-laws that will govern the conduct of the organization.

**Land Acquisition.** Purpose: to arrange options and catalogue possible available land for sale; to acquire land when offered for sale as funds permit.

**Fund Raising.** Purpose: to raise funds for land acquisition offered for sale or option.

**Committee on Permanent Organizational Structure.** Purpose: to conduct any and all necessary business in the interim period.

#### **The Process of Incorporation**

A large October meeting was held in Atlanta to discuss the process of incorporation, the issues of structure, tax exemption, and election of officers.

**Legal Trust vs. Nonprofit Corporation.** The choice between incorporating as a trust or as a nonprofit corporation was discussed at length. Some argued that the nonprofit corporation would be less restrictive than a legal trust. A trust might require getting court approval on every transaction, while a corporation would be legally empowered to borrow money and pay interest to acquire capital for land purchase. A motion was adopted to set up a nonprofit corporation and apply for federal tax exemption. Six or seven Southern states were selected to be investigated to determine the one with the most suitable statutes for incorporation.

An attorney from Albany explained the steps of the incorporation procedure in Georgia: a *de facto* corporation is approved by the court as soon as it has been determined that it does not duplicate another corporation — a process that might take six weeks — and then it may begin operation. And although IRS tax exemption itself might be obtained in six months, it often requires a great deal longer. Five incorporators are required, furthermore, two of whom must reside in the state.

It was agreed that individual families would lease the land and pay a modest rent that would be used to pay off the loans plus interest. Leases would be made directly from the landholding corporation to individual farmers or settlers who will be using the land. Any land used and held cooperatively would be leased to the cooperative.

The meeting unanimously adopted the name New Communities, Inc., as first choice of several names submitted for consideration. (A second and third choice of names was also made, in case a corporation with an identical name by chance already existed.) The following subtitle was also adopted: "A nonprofit organization to hold land in perpetual trust for the permanent use of rural communities."



**Election of Officers.** A slate of temporary officers was chosen for the positions of chairman, treasurer, and secretary, and a temporary executive committee was established, made up of these officers plus the chairmen of all the standing committees. The group voted that all board members would be selected for their individual performances and not as representatives of organizations, and that the board should consist of not less than seven nor more than 25 people. Permanent offices would be president, vice-president, secretary, and treasurer. The decision on the final number of officers and their exact titles was left up to the attorneys.

The temporary treasurer was requested to prepare a six-month operating budget for which funds would be sought as soon as possible. In the meantime, the group decided that about \$2,000 should be raised for immediate operating expenses.

**Bylaws Drafted.** The interim board met in Albany on March 23, 1969, to draft the bylaws after they had been read and discussed section by section. Permanent officers were elected: Slater King, president; Father A.J. McKnight, vice president; Faye Bennett, secretary; and Leonard Smith, treasurer.

**Executive Committee Selected.** On May 10, 1969, the board provided for an executive committee by adopting the following resolution:

It being noted by the Board that the size of the Board of New Communities, Inc. is such that a smaller working group is necessary to carry on the work of New Communities, Inc., between Board meetings, it is hereby resolved that an acting Executive Committee be and hereby is created and the necessary power and authority is hereby delegated to the Executive Committee to act on behalf of the Board of New Communities, Inc., between Board meetings.

A. The Committee members will consist of the officers of the board of New Communities, Inc., and the Chairmen of the standing committees of New Communities, Inc. A majority of the number of members will constitute a quorum.

B. This acting Executive Committee will meet at least once between each Board meeting and at such other times as is deemed necessary by its chairman or on petition of four members of the Committee.

C. The Committee shall have the power to act and carry on the duties for New Communities, Inc. whenever necessary. All actions to be reported to the Board of Directors.

#### **Location of the Office**

At the meeting of the interim board on December 7, 1968, in Atlanta, a major portion of the discussion centered around the location of the office and the scale of the trust.<sup>43</sup> A narrow focus might obscure the fact that the land trust concept has an almost uni-

43 One of the charter petitioners, an attorney, 21 explained that the principal office is the place where records, legal documents, and legal papers can be served on someone officially connected with NCI. The main operating office might be located elsewhere to facilitate a wider spread organizational thrust at a later time.

versal potential; if the office were located in Albany, the trust might appear too localized and limit the possibilities for being translated elsewhere on a larger scale. But from a practical standpoint it did not make sense to have it in Atlanta, 180 miles away, since Albany was the vortex of interest, especially after the land decision was made. Finally, because the core leaders — Sherrod and King — were from Albany, Albany was chosen for the office location and later became the home of New Communities, Inc.

### Financing the Initial Land Purchase

The May 10 meeting decided that a file should be kept on all available land, even though there was not yet money to make purchases, and agreed to have the Land Acquisition Committee find out what government land might be available for purchase (or available some other way) for the use of poor people.

Buying a large tract of land for a black-oriented community development project can be difficult anywhere, but particularly in the deep South. The task had to be done quietly, since it was more than an ordinary business transaction. The NCI acquisition was thus considered something of a coup since it is doubtful the land would have been sold — at any price — if it had been known what kind of project was planned. The reason is obvious: land, especially in this agriculturally oriented area, means power, and since the project was to be run predominantly by and for blacks, it meant black power.

In the late spring of 1969, the board decided to take an option on a large farm — Featherfield Farm, an old plantation owned by two brothers — about 30 miles north of Albany, Georgia. The property contained 4,800 acres; 3,000 acres were good cultivated land and the rest wooded. There were a number of buildings in varying states of repair, including six houses. The president of the corporation negotiated a one-year option on the property at a total sale price of \$1,080,000 for \$50,000, which was put up by the National Sharecroppers Fund. At \$225 per acre, the price seemed good. This left \$1,030,000 to be raised within one year.<sup>44</sup>

The board hoped that federal funds might be secured through one of the farm or poverty agencies to finance at least a portion of the acquisition. The Office of Economic Opportunity made a planning grant in the amount of \$98,000, under Title I-D. This could not be used to purchase property, but the funding opened up access to expert legal and financial contacts that proved extremely valuable.

The property was already mortgaged in the amount of \$400,000 from a major insurance company which agreed to increase this to \$500,000. But when a Texas businessman put up personal stock in the amount of \$300,000 in securities as collateral, the insurance company extended its mortgage to \$800,000. What amounted to an additional mortgage in the amount of \$50,000 was secured from a special fund of a Protestant church denomination, guaranteed by the Georgia synod of a second denomination. A small number of private individuals were able to assemble the balance of



44 A short time after the option was secured, the president, Slater King, was killed in an automobile accident. This tragedy robbed New Communities, Inc. of a man who had been a key figure in its inception and development. The loss did not cause the program to founder but certainly handicapped its subsequent development.

\$180,000 in cash on a loan basis, guaranteed through a note from an economic development corporation subsidiary of still another Protestant church denomination. This corporation in turn was given a second mortgage to the property.

The insurance company, however, had a policy that precluded mortgaging the property of a nonprofit corporation such as New Communities, Inc. based partially on the reasoning that from a public relations standpoint it would be undesirable to close on a nonprofit group. In response, a “shelf corporation” — a dummy corporation set up in advance for just this sort of purpose — was dusted off, the previous nominal board members replaced by members of the New Communities board, and this “for-profit” corporation, Benenden Corporation, proceeded to purchase the property and continues to hold title.

All the pieces were now dangling: the major piece — the first mortgage — was secured by the land; the critical links — the church loans — were not possible without collateral of some sort. The final key to putting the package together was the idea of subordinating all these loans with at least partial backup in the form of Texas business securities.

In spite of the complications, the financing was arranged by late 1969 and a closing date set for noon, January 9, 1970. However, while all this was going on, as might be expected, local pressure was being placed upon the sellers, and by the end of the year they were seeking ways to kill the transaction. In fact, it was not even known for sure that the purchase could be completed until the host of lawyers representing all the parties involved had assembled and the checks were laid on the table.

The checks to close the deal were New York-drawn and had to be certified through the local Albany bank to be satisfactory to the owners and the lawyers. A committee of eight — lawyers and others — worked in New York to process the checks the day before the closing. The only flight that would get them to Albany in time to certify the checks the next morning left at 1:00 A.M., but when they boarded the plane it was discovered that a defective door might force the flight to be scrubbed. Nevertheless, with some ingenuity the flight took off, the fate of the New Communities experiment virtually hanging on the rope the passengers used to hold the door shut during the flight!

As soon as the bank opened in the morning the group went into Albany to get the checks certified before meeting with the sellers for the closing. By noon, the deadline for the closing, one church check was still missing; the sellers, already under pressure (and minor harrassment) from local people, as tension mounted became even more leary and at noon started to walk out. What followed involved more legal maneuvering: the lawyers for the sellers worked also for the insurance company holding the first mortgage. Since this raised a possible conflict of interest, as was pointed out by the the NCI attorney, the sellers were talked into waiting. Five minutes later the missing check arrived and the papers could be signed. At last, New Communities, Inc. (in the

form of Benenden Corporation) received title to several thousand acres of rich farmland in Georgia.

Of course, the story of financing New Communities, Inc. is just beginning. A good portion of the funds used to secure land is in the form of loan money, so there is a very high interest burden to be carried, not to mention development costs. As of this writing, the struggle continues to develop new funding methods to reduce the carrying costs and attract development money. Work is being done on several of the methods described in the financing chapter, including inflation-protected "social investment" bonds and establishing limited partnerships for production of housing and other improvements, with shareholders taking advantage of tax loss benefits.

### **The Reality: Building the Community**

Community participation has been a cornerstone of the New Communities approach to developing its land. Not only is the story of NCI one of committee planning sessions, but in an effort to bring together potential participants, leadership, and resource people so they might learn from each other, a "charrette" — a type of extended encounter session first used in France as a planning tool — was held in Albany in the late winter of 1970. Over 100 attended, including 30 potential residents, students from black colleges, and those who had so far been involved with the project.

Out of this and other meetings what appeared to be an effective "farm committee" formed; however, during the critical first working summer of 1970, New Communities was again robbed of crucial human resources by an automobile accident. The farm committee, returning from a meeting at the farm, struck a truck parked in the middle of the road. All four occupants were seriously injured and by a miracle survived. But, for that season at least, farm supervision was almost completely wiped out.

In spite of this second tragedy, substantial progress was achieved in 1970. During this first crop year 1,200 acres were utilized for various crops, including corn, peanuts, soy beans, watermelons, and hay. All of the existing houses were repaired as needed and seven families moved onto the trust land. One house was remodeled for a day care center and two others for housing volunteer workers. During that year of the highly publicized "Venceremos Brigade" of Americans who worked in Cuba on the sugar harvest, a less publicized "Georgia Brigade" — mostly students, some from as far away as Los Angeles and Boston — traveled to Georgia to swell the labor force. By the end of that year an educational program was launched for teenagers, utilizing another of the existing buildings.

Besides farming and education, various forms of industry are also envisioned. These include a horticultural greenhouse operation, catfish farming (three streams run through the land), recreational facilities, and processing plants for locally grown produce. There is a plan to establish ties between the local welfare department and New Communities

community development corporation so that welfare families can participate in the community as worker-owners of the farm.

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Whether or not these plans can be implemented depends on the availability of two key ingredients: stable leadership and suitable long-range financing. These two elements may indeed determine the very survival of the New Communities experiment.

### Initial Considerations and Relationships

#### The Issue of Control and Exercise of Trusteeship

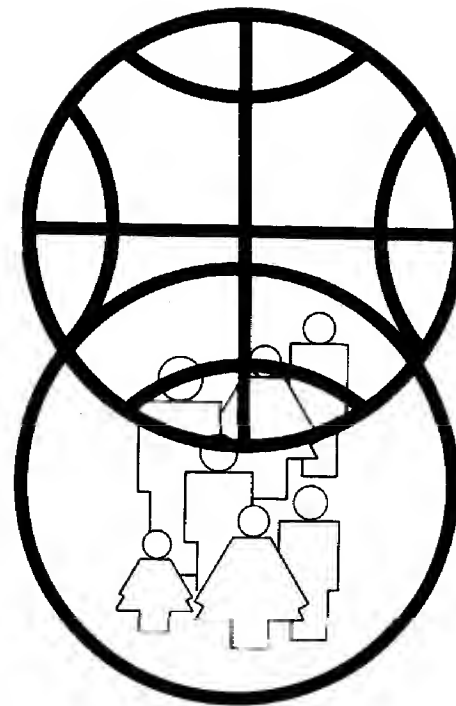
Building on the experience of the various experiments in the United States and elsewhere, it becomes possible to isolate and define two issues that are basic to the community land trust concept: the issue of control and exercise of the trusteeship function. Crucial to the successful implementation of land trusteeship is the resolution of tension between two principles: the right of the individual user of land to control his life; and the need for a body somewhat removed from the day-to-day problems related to use of the land, that can perform the long-range allocation function and ensure that the goals of the trust, as spelled out in the charter, are preserved.

Hereafter, we will talk about *control* as the function of the land users (both individually and as a group) and *trusteeship* as a function of a separate group, though perhaps overlapping in membership with those who exercise control. We will use this distinction to consider the issue of rights of users in contrast to the rights of posterity or other non-users. Our discussion has as its model the New Communities, Inc. experience. The NCI board (made up of civil rights and other leaders and specialists from many different states) can be conceptualized as exercising the trusteeship function, and the local population of southwest Georgia can be viewed as the main or potential users of the particular piece of land that NCI seeks to hold in trust.

**Local Control Within the Community Land Trust Framework.** Local control is primarily control by users who are accustomed to thinking in terms of individual ownership; their readiness to work in a community land trust framework is conditioned by this attitude. Moving to the concept of group ownership from individual ownership is therefore a difficult transition, made even more difficult if that ownership is not vested in the users alone but in a board that is not confined to people in the local community.

People who have never had a chance to own land — especially low-income persons, whether in rural or urban settings — may very well reject the idea of a trusteeship over the land they expect to use. Members of minority groups who have been typically excluded from land ownership and often view it as the only way to gain control of both land and their own destinies, may see such a trusteeship as merely another exclusion.

Yet, in fact, the land trust concept can be seen as the best way in which local control can be gained *and* maintained. A program of local education and orientation among potential users and a careful structuring of the trusteeship board's relation to the local control mechanism can help defuse this very difficult issue. But it must be recognized that the issue is never completely resolved. It is an illustration of the more general problem everyone faces — accommodating local needs to the needs of a larger community.





**Establishing the Line Between Control and Trusteeship.** As might be expected, there are differing views on where to establish the critical line between control and trusteeship. What is agreed is only that experience demonstrates the necessity of a more or less broadly based board distinct from the users of the land; the advantages justify the effort of grappling with the interface between the two.

It is important never to lose sight of the primary purpose of the community land trust: to acquire land and hold it in trusteeship. Thus, the trust should not be deeply involved in the development of the community, population selection, site planning, or institutional development. These concerns affect the interests of the trust only to the extent that the long-term value of the land and its resources are enhanced or depleted, or to the extent that the fundamental principles of its trusteeship charter are affected. The development functions should be performed primarily by the actual and potential users of the land through separate community-based organizations, such as a community development corporation.

On the other hand, early decisions of the trustees will have an important lasting impact on the nature of the land trust. In the United States, this impact will stem from the local constituency or community groups involved initially in the trust, identified as the "local sponsor."

In contrast, somewhat greater continuing control on the part of the trustees is exercised by the Jewish National Fund:

It is essential that the trust itself — or bodies that are totally under its control — continue with the infrastructure of the first stages of development even after having assured ownership of the land. This is to ensure the necessary follow-up during the early stages of development and also to reduce the burden placed on the prospective individual land holder.

Similarly, it will ensure the correct approach to the *utilization* of the land and guarantee that the intrinsic normative value of the land — which rises significantly with the initial planning and development — remains for utilization by the trust. It should be added, though, that the final development, such as building and construction work, etc., must be transferred from the trust to the landholders themselves or to their delegated authorities; this obviously, though, only for the permitted aims of the settlement. (There is a theory that the personality of a man is determined during his first two years of childhood. I fear that similarly during the first stages of land purchase by the trust and the initial development planning, the fate of the land is determined for at least one whole generation.)

Although it is essential that [the fundamental assumptions concerning the utilization of the land] remain in the hands of the trust, it is preferable that

either the trust sets up an advisory board of the people of the place concerned or that it co-opt to its own board (as advisors) some of the land holders. The inclusion of the local people is of democratic significance, though being close to the land in question arouses local interests, biases, and pressures which distort the overall position and general principles of the trust.<sup>45</sup>

It is in the final analysis the representational mix of the board of trustees that will determine the balance between local control and the trusteeship function. In the case of New Communities, Inc., strong demands for local control resulted in weighting the balance in the direction of the resident community. But we should emphasize here that this compromises the ideals behind the land trust idea. A major long-range goal of the land trust idea is to provide access to the land for all people, and particularly for those — the poor — who have been excluded from land in the past. It can be argued therefore that the majority of the board of trustees should consist *not* of those who have already received access to land through the land trust, but rather people who can identify with those *not* on the land.

**Bases for Regional Trusteeship.** The line between control and trusteeship may be drawn differently, depending on the nature of the resource involved. Use of the land itself (within the framework provided by the trust in exercising its planning function) will normally be subject to purely local control. Other resources may be under regional trusteeship, depending on their scarcity and other factors.<sup>46</sup>

Water rights are a commonly applicable example. In the northeast United States, where there is little scarcity, water might be a resource under purely local control. However, in the West, water may be a relatively scarce commodity and its allocation should be on a wide geographic basis, in trust for the whole region.

This regional nature of resource allocations is a major argument for the regional land trust. There are also a number of other practical reasons for favoring trusteeship on a regional basis. Even when there is not domination by one individual or small group, local trusteeship presents several dangers:

1. Locally owned land and the community and any business development associated with it are more vulnerable to pressures from the economic and political forces in the surrounding local area.
2. The purely local land trust can be in danger of being foreclosed without the support of publicity and institutional ties on a wider basis (thousands of acres of land have been lost in the past by internally owned communities through this sort of tactic).
3. There is greater risk of internal factions seeking to gain power or control of the community.

45 Shimon Benshemesh, letter to Robert Swann, December 7, 1971. As mentioned by Mr. Benshemesh, certain initial decisions by the organizers of the trust will determine the "personality" of the trust for at least one whole generation. It is important, therefore, to proceed but to proceed with care and foresight, never losing sight of the fundamental beliefs on which the community land trust concept is based.

46 An essential nonrenewable resource which is relatively scarce on a worldwide basis might be considered subject to trusteeship on a very large geographic basis — an alternative that might prevent a narrow nationalistic approach. Rhodesia's legitimacy, for example, is protected by the coincidence that it is one of the few sources in the world for chromium — a resource that is not even used to benefit its own people.

Furthermore, with support on a larger basis, there is greater opportunity for financial support in the form of contributions and low-interest investments. (The Jewish National Fund, with its worldwide ties, is of course the best example.)

The need for a more widely based board of trustees is also evident from the point of view of the larger picture. It is unlikely that a large number of the members of any community will have strong ties or concerns outside the community itself. However, there is a danger that if they alone elect the board of trustees, the board may tend to represent a narrow and sectarian interest rather than a concern for the broader social welfare. The trust can tend to become an increasingly narrow and rigid group rather than a dynamic force for social change.

**Special Problems in the Control of Donated Land.** A conflict between short-range expedience and long-range integrity is often posed when donations of land by individuals are considered. Such donations are frequently offered with the idea — explicit or implicit — that the donor will continue to exercise control of the major decisions, such as who shall be permitted to use the land.

This arrangement, even if sanctioned by everyone when the trust is formed, is likely to become a bone of contention within the community. It is therefore wise to have a clear understanding in the beginning that no such control resides with any single individual or family, no matter what the initial contribution to the trust. It is better, in fact, to pay for the land rather than risk holdover emotional attachments which can later hinder decision-making.

Another possibility is to reimburse the owner in “land bonds” or a similar certificate or note that can be developed to suit the specific situation; interest payments and payments on principle may or may not be involved.

### **General Organization and Structure**

#### **Use of Existing vs. New Trust Organizations**

Organizers of a new community should consider the possibility of utilizing as trustee an existing land trust or other suitable existing organization rather than setting up a new trust. Examples of these are given in Chapter Eleven. Some advantages of this approach that could benefit the organizing group might include:

1. Utilizing the existing trust's stability and organizational know-how, as well as its proven and recognized experience in organizing, which would enhance public confidence and facilitate fundraising.
2. Speed and simplicity in the organizing process. No new incorporation process need be undertaken: a division would be set up within the existing organization, or a special committee appointed to monitor and assist the community.

On the other hand, if this approach is taken there are several problems to deal with:

1. First of all, it is hard to find an existing organization that has a central purpose adequately related to the purpose of the community land trust. This could result, for example, in a passive approach to land acquisition, since the land trust role might remain secondary to the board members and staff of the existing organization.
2. An organization accustomed to operating on contributions may not be able to adapt itself effectively to raising and managing investment funds that undoubtedly will play a large part in land acquisition.
3. If the existing organization controls allocation of all funds, competition could develop between funds for the land trust operation and other, older programs.
4. Liabilities in connection with the community land trust could cause problems for the trustee organization, and vice versa. (For example, the attorney who helped write the charter for the Voluntown Peace Trust advised that the trust not hold title to any property (in this case, an automobile) used by the lessee of the land or in any way become involved in its affairs; such involvement might legally or financially jeopardize the functions and assets of the land trust.
5. The procedures used by the existing organization in choosing its governing structure might not be compatible with the needs of the land trust.

When considering using an existing organization to act as land trustee, the following factors might be examined:

1. Is it regional in character (which is preferable since it will have a better understanding of local conditions, land values, etc.)?
2. Has it been in existence for a number of years and does it have experience in community development?
3. Is the board and staff enthusiastic about the community land trust concept?
4. Can it identify with the constituency involved in the land trust (particularly in the case of ethnic or racial groups)? Can the constituency identify with the organization?
5. In the interest of fundraising, does it have tax-deductable status?

#### **Choosing the Legal Entity**

The choice of legal entity must be made early in the process of setting up a new organization. Should the community land trust be established as a legal trust or as a corporation? And in the case of the corporation, should it be nominally for-profit or non-profit? Nonprofit status has a number of major advantages, especially in the area of fundraising and taxation.

The decision will also have to be weighed within the context of the laws of the state in which the organization will be chartered. Some states require that a legal trust obtain

court approval of each separate land transaction. On the other hand, states normally require a nonprofit corporation to file annual reports and impose certain additional restrictions.

If a trust is to be regional with operation in several states, the laws of each state can be studied and the one which offers the most favorable legal environment can be used. Corporations can generally be set up in any state, regardless of where the offices or assets are located; on the other hand, incorporating in the "home state" will normally offer certain conveniences which would offset higher initial costs or other regulations.

Help from an attorney will be essential in setting up the legal structure and adequately evaluating the best approach. It is best if an attorney is selected who has experience in setting up such organizations and can relate to the community land trust concept.

#### **Relation to Other Organizations**

The land trust itself serves as trustee of the land. In its minimal definition, this authority includes only a few matters such as selling or subleasing the land, inheritance rights, natural resource rights, and limits on speculation and improvements. The trust is responsible for guaranteeing that the land is used to achieve the specified social purposes. To carry out responsibilities beyond this, such a trust will normally encourage the formation of other organizations, or work with existing organizations.

The number and types of organizations with which the trust will be involved depends upon its specific situation and goals. Described below are several organizations which *might* be relevant in the case of a full-blown rural new town project such as New Communities, Inc. Trusts more modest in scope might not be involved with such related organizations. (And in the case of the Jewish National Fund, in which the trust assumes a greater role in planning and development, the functions of some of the organizations might be carried out within the trust organization itself.)

**Local Sponsor.** In the case of rural new community development, the assistance of one or more grassroots community organizations will normally be sought for initial coordination. The group that serves as local sponsor brings potential residents or new community members together for involvement in the decision-making process right from the beginning. It provides orientation in the land trust concept, formalizes principles on which the community will be built, and helps plan organizations for development, such as community development corporations. The role of the local sponsor will diminish and eventually vanish as the new community structures begin to function effectively.

**Community Development Corporation.** The CDC is an especially flexible institutional arrangement that might be utilized in conjunction with a land trust. The CDC has, in other settings, been the corporate instrument for local poor people to develop their community with economic and business facilities as well as social services, and it can

be used effectively for the total development of the land held by the trust. It can perform the role of the commercial developer, but is responsible to the community.

A CDC may be for-profit or nonprofit, but it is always controlled by the residents of the area it seeks to develop so that all residents benefit from its operations, rather than a selected few owners. Thus, the CDC is ordinarily owned by the residents (one share apiece, in some forms of the institution) or managed by the residents as a nonprofit organization.

In the absence of control of necessary governmental institutions (where, for example, these extend over a wider territory than the land to be developed or where certain residents may be systematically excluded from participation in the government), the CDC offers a particularly powerful community instrument for development: it operates with limited liability; can raise and invest capital; initiate and own manufacturing or retail businesses; build housing; engage in farming; carry out industrial site development; and expand the community facilities in health, recreation, and day care. All of these in fact have been activities carried out by CDCs.<sup>47</sup>

It should be noted that the CDC and the community land trust need not — in fact, perhaps should not — be coterminous. The land trust might be viewed as an instrument that can be set up by a pre-existing CDC to hold land used by the various enterprises of the CDC (housing, farming, industry, social services). In the case of a large, regional land trust, there might be several CDCs operating to serve several different local community areas, either initiated by the land trust or pre-dating it.

**Town Corporation (or Governing Committee).** For the greatest chance of success, a new community in its formative stages needs to be assured of maximum political autonomy. This can be achieved to a degree depending on the specific state and the size of the community. If chartered by the state as a municipality, a great many advantages will open up (although again, these will vary depending on the state). In most cases, there will be more sources of revenue: property taxes and other local taxes will not be administered from the outside; all revenues can be collected by the trust from land rent and other assessments. It might be possible to raise funds for community projects through municipal bonds which are normally easy to place because of tax benefits. Funds should become available from state and federal "revenue sharing" plans. Federal and state programs designed to aid towns and cities can be tapped. Schools and law enforcement can be handled within the community if desired, in keeping with the philosophy of the residents. Zoning and building codes will also be locally developed and administered (within certain broad limitations).

In most states, special legislation is needed to incorporate a community as an independent political entity at an early stage of its development. However, in the case of two

47 For detailed information on the activities of CDCs and a bibliography of CDC-related materials, write the Center for Community Economic Development, 1878 Massachusetts Ave., Cambridge, Mass. 02140.

states, incorporation can take place at the very beginning, even before there are residents. California permits this for developing "special districts," and recently Kentucky, urged by the Urban Studies Center of the University of Louisville, has made legal provision for "New Community Districts." These districts can have at least a degree of autonomy in controlling development.

In the South it is apparently less difficult to incorporate than in many other parts of the country. It is anticipated, for example, that New Communities, Inc. will become incorporated as a town when more families have been able to move onto the land.

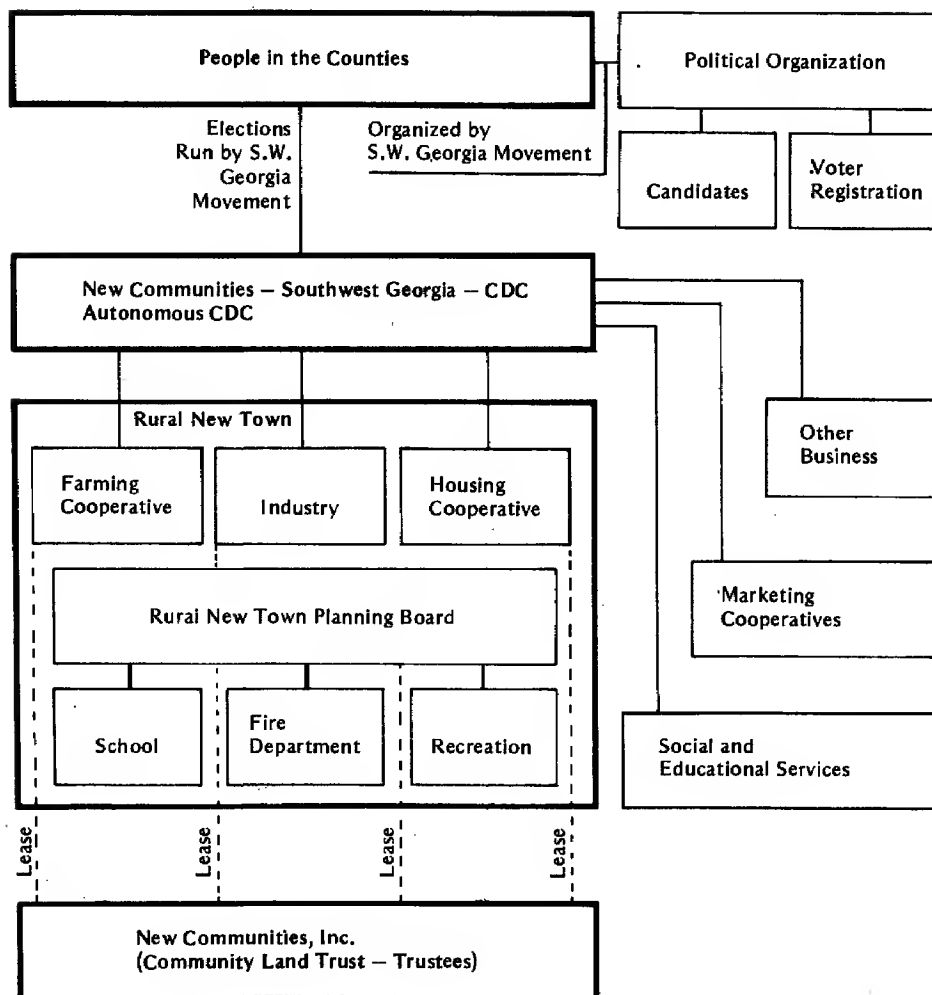
In a small land trust community the function of the town corporation will ordinarily be carried on by officers or a committee chosen by the community. Ideally, the community's governing structure would be an incorporated town government chartered by the state, empowered to levy its own taxes, form school districts, and receive revenues from the state and federal government. More typically, the town corporation will not achieve this status and will function both within the framework of the land trust charter and the government of the larger municipality or township in which it happens to be located. This, of course, means it will be subject to the laws of that municipality relating to property within its boundaries, including property taxes, zoning, and building and sanitation codes.

#### **Participation**

These organizations, or the functions they represent, are vehicles for involvement by members or new town participants. Broad-based participation in the planning and evolution of most new towns is an afterthought; in the case of the community land trust it is one of the foundation stones.

The right of users of land held in trusteeship to shape their community and control their lives must not be compromised. In fact, this can be assured through such member-controlled organizations, releasing the kind of spirit and commitment which will be essential for building a successful new community.

Chart 1: New Communities, Inc. Model

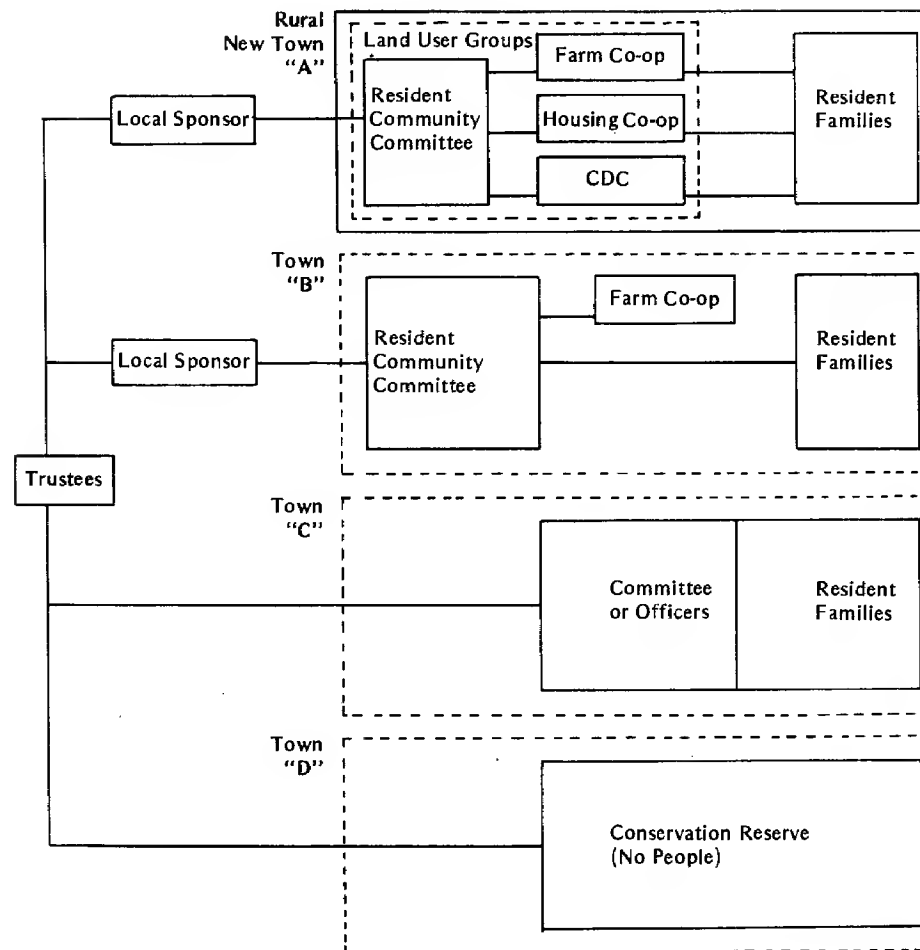


The long-range plan for New Communities, Inc., as diagrammed, shows the trustees in a relatively subordinate position, leasing land to various cooperatives and other agencies. Initially, at least, these groups would operate as part of a large community development corporation; later, they might (or might not) spin off as separate organizations. In this chart, as defined earlier in the text, the *community* consists of all people represented anywhere on the chart; the *resident community* consists only of those living within the land trust.

The rural new town may or may not be chartered by the state as a municipality in its own right. If it is chartered as a town, the diagram might also show a formal political structure (town government). But in any case, it should be mentioned that within the framework of a community land trust the various institutions are likely to be "self-regulating," with the people controlling the economic institutions which directly affect their lives. This means the community "political" government — if present at all — plays a less prominent role.



Chart 2: Regional Land Trust Model



This chart illustrates how several geographically decentralized communities or "units" might be quite different in size, structure, and purpose, but could all be strengthened under the umbrella of a single regional land trust.

Town "A" is the largest and has been chartered by the state as a municipality. Each of the other units functions within the context of a different local town, city, or county government. In Town "B," the land trust community is probably a bit smaller, with residents leasing directly from the trust. Town "C" is a more simply structured unit, a resident community or homesteader community without any cooperative economic institutions of its own. And in Town "D," the trustees administer a tract for conservation purposes, without any residents at all.

## Chapter Five: Internal Organizational Structure

Even though there might initially be only a small number of people involved in organizing a new community land trust, it is essential to set up a formal organizational structure. First of all, state laws require this of any organization holding title to land. Second, if wisely planned, the organizational structure will help ensure that over the years, and with the possible turnover of people, the original goals of the founders are preserved.

In the rest of this guide, we will use terminology which is normally used for a non-profit corporation: "members," "board of directors," and "officers." Each of these categories has an equivalent in a trust or for-profit corporation.

Members are somewhat analogous to shareholders in a for-profit corporation. They may have a significant role in selecting the board of directors — or be solely responsible — and therefore should be carefully defined in the bylaws. In the beginning, before a formal legal structure is initiated and when only a small number of people may be involved, the "membership" may simply consist of those people who show up and are willing to work, but formal membership will eventually have to be defined.

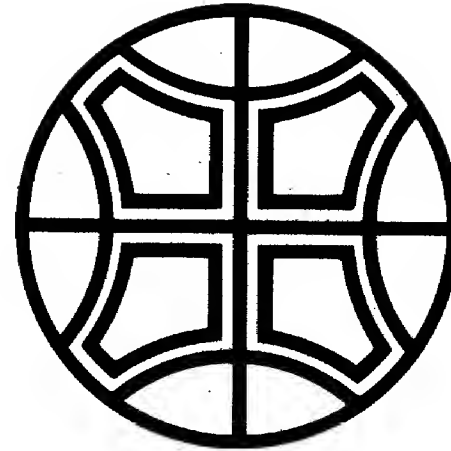
The board of directors might be the same as the formal membership *at the beginning* if only a small number of people are involved. The board functions as the trustee and is the body with the ultimate authority over the land (limited, of course, to the kinds of decisions entrusted to it under the bylaws).

Officers are selected by the board from among its number, to implement its decisions and policies.

### Articles of Organization

Any type of organization must have a basic document, or "articles of organization." In the case of a corporation, this is called the "articles of incorporation"; in a trust, the "charter." This document should clearly state the purpose and general functions of the trust organization (in contrast to the bylaws which spell out the operational procedures). The purpose might be defined as acquiring and holding land to benefit low-income families; encouraging the establishment of new communities; preserving "conservation" areas; or setting up educational or social service organizations, or community development corporations. The main purpose might even be defined in very simple terms: to provide a means of access to land resources for all, without discrimination.

The provisions of the charter should be as broad as possible to allow the trust to operate legally without undue constraints. However, the basic principles should be clearly spelled out and there should be certain very important restrictions — for example, that personal enrichment in the event of dissolution be prevented. This can be provided by a special note in the articles of organization. (Such a note is, in fact, required by most state laws.)



Provision must also be made for disposition of the assets of a nonprofit corporation. The provision should clearly designate a beneficiary to receive any assets that remain after settlement of debts in the event that the trust is dissolved. State laws normally require such a provision. In the case of the legal trust, a “beneficiary” must always be named; in the case of a nonprofit corporation, a provision must be included in the by-laws naming or describing the equivalent of the beneficiary.

We recommend that first priority be given other land trust organizations; second priority (in case there is no suitable land trust available) might be certain nonprofit, public service organizations, which should be named. If there is no provision for disposition of assets, or if the provisions cannot be carried out, the state is normally the ultimate beneficiary.

#### **ByLaws**

Among the points that should be included in the bylaws are:

1. Definition of membership;
2. Method of selecting the board of directors;
3. Functions and authority of the board;
4. Size of the board and length of service;
5. Officers, their duties, and length of service;
6. Executive committee, its membership, its authority to act on behalf of the board;
7. Standing committees and (perhaps) certain temporary committees;
8. Dates for regular meetings; procedures for calling special meetings;
9. Administrative structure of the land trust; management, accounting, relationship with lessees;
10. Policies with relation to land use: rentals, types of development permitted, appraisal on property externalities when a member leaves;
11. Provisions for changing the charter or bylaws. (It might be desirable to make certain bylaw provisions, such as those relating to the sale of land, unamendable);
12. Some provision for action or decision-making without a meeting of the board — perhaps by letter (i.e., by consent vote);
13. Clauses to help the members of the resident community or the trust finance improvements might be considered desirable. (However, planners will have to balance this against the imperative to maintain title to the land and therefore not permit arrangements in which land is used as collateral.) Provisions to subordinate the

interest in the lease should be written into the bylaws if this is to be permitted (see Chapter Seven).

#### Selection of the Board

Since the board, or the trustees, represents the ultimate authority over the land, the method of selection is critical. In keeping with the main thrust of the land trust concept as described in this book, a majority of the board membership should consist of people somewhat removed from the resident community, serving on a relatively long-term basis.<sup>48</sup>

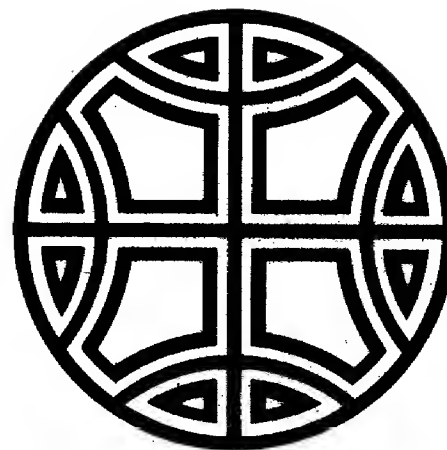
In general, the board should represent various groups in the larger "community." A certain proportion of members should be allocated to the resident community (in New Communities, Inc., two-fifths of the board members represent the potential or actual resident community); others should represent local organizations — groups operating within the land trust, such as farm co-ops or community development corporations, or groups in the larger local community acting as the local sponsor. In addition, "elder statesmen" might be selected — as individuals or representing certain key organizations so that the larger, public interest is represented on the board. They might be chosen because of special skills or resources in areas such as law, finance, planning, or ecology.

For various practical as well as symbolic reasons, the board of a regional land trust ought to include public appointees — chosen by the town, county, or state government. Depending on what proportion of the board is made up of public appointees, the land trust might approach the kind of public corporation that has been proposed to set up and administer conservation land banks and other public trust land in various states.

If the composition of the board is by organizational allocation, there is danger that changing circumstances could make the bylaws obsolete or unworkable. Organizations sometimes dissolve, or their interests change. New groups are formed. Perhaps a provision could be included that the organizational allocation be re-examined yearly and perhaps changed by a three-fourths majority of the board. Certain groups which will always be in existence and involved (such as the resident community and government organizations) might be excepted from reallocation.

The method by which each organization chooses its representatives should be left up to that organization, although there might be a provision to ensure some turnover without discontinuity. Terms of four or five years might be reasonable, with the expiration dates staggered.

The bylaws should additionally specify that board members serve without compensation, although they may be reimbursed for expenses. If there are to be paid staff



48 We recognize that in many cases the initial composition of the board will be self-defining; as mentioned above, it will consist of the organizing group. But to meet the organizational requirements of the state — and also to provide continuity as the effort becomes institutionalized in the future — it is essential to spell out carefully how the board is to be selected.

members or consultants hired (lawyers, appraisers, etc.), guidelines on their compensation might be defined.

#### **Special Bylaw Provisions**

**Quorum Provisions.** As in normal rules of order, the bylaws should include a quorum provision, high enough to prevent a small group from co-opting or twisting the purpose of the trust, but at the same time not so high that operation is hampered by inability to make decisions. Examples of workable quorums might be one-third of the members at board meetings, and two-thirds at executive committee meetings.

**Sales Transactions.** Since the main purpose of the trust is to acquire and hold land, special provision should be made to ensure that trust land is not lost or sold for private profit. It would probably not be desirable to state that trust land can *never* be sold, since it might be in the interest of the long-range goals to consolidate scattered parcels or sell certain lands with the proceeds used to buy more desirable land. Although more important questions might be decided by a larger majority, a three-fourths majority vote of the board should certainly be required for sales transactions, with the further safeguard that this bylaw provision is unamendable. On the other hand, the articles of organization or bylaws could ensure that the main purpose of the trust is not watered down, by either prohibiting the sale of land or permitting sale only if the proceeds are used to buy other land.

**Sale of Private Property on the Trust.** Provision must be made for fair and orderly transfer of non-movable private property when members of the resident community decide to leave. So that the trust can control land use, the bylaws might provide that the trust have first option on the sale of any houses, buildings, or other improvements. Other methods to transfer these kinds of property are described in Chapter Nine; however it is handled, it should be spelled out in the bylaws.

#### **Additional Structure**

The rest of the organizational structure need not differ significantly from that of any other type of organization. The board will elect its officers and may, further, if it is larger in size than efficiency demands, empower an executive committee to act for the trust between meetings of the board. It might be useful, especially during the early stages, to create an advisory board composed of those with specific skills needed for setting up the trust and developing the community (lawyers, planners, realtors). Depending on the scale of the program, there might also be paid staff: a director, a bookkeeper or business manager, and a clerk.

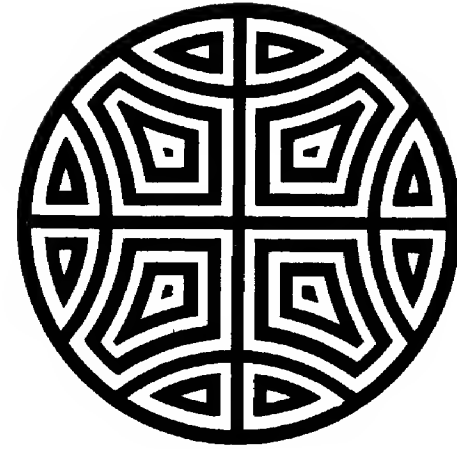
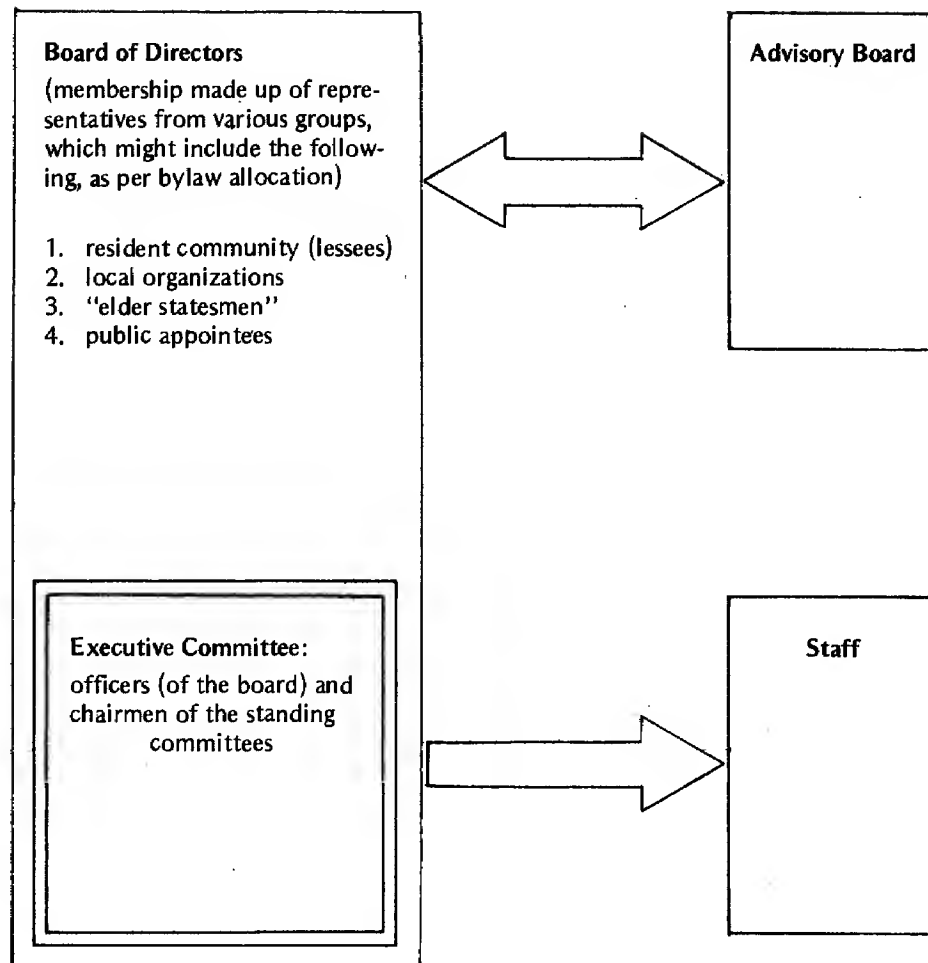


Chart 3: Internal Structure of a Regional Land Trust



## Chapter Six: Land Selection and Acquisition

In some cases a land trust will be formed by individuals or groups who already hold land (although the trust might want to increase its holdings through additional acquisitions); other groups have to face the difficult hurdle of land selection and acquisition. This chapter outlines several ways in which new land might be acquired for community land trusts of significant scale on a basis which will not exhaust the group's financial resources. But we should emphasize that some of these approaches are speculative, and to date have not been successfully exploited. This does not mean, however, that they should not be explored.

It is important to understand that the scarcity of land that makes land prices high in the United States is an artificial scarcity. Vast areas in the country stand unused or underused. The amount of land in relation to population is difficult to change, but the institutions that lead to artificial scarcity can be changed.

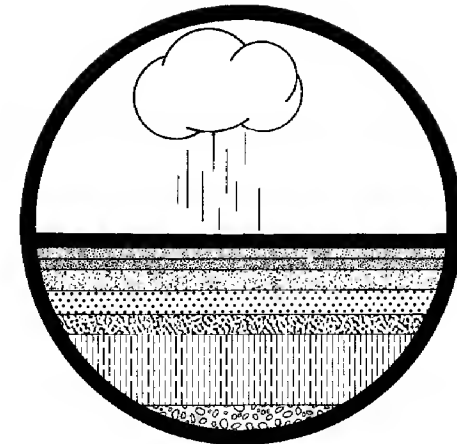
One of these institutional factors is the amount of land held by the federal government. In 1964, 39.1 percent of the total United States land area was owned by the government: 33.8 percent federal, 4.5 percent state, and .8 percent local.<sup>49</sup> Much of the huge percentage owned by the federal government is poorly utilized, yet not available for socially constructive development on any basis. The other major institutional factor is the conventional approach to property taxation which taxes improvements heavily and unused land lightly, thereby encouraging owners to hold land for speculation.

A new property tax policy in two areas — Hawaii and the Virgin Islands, where large areas of land are in the hands of relatively few families — suggests that a tax solution to easing the problem of land acquisition may become more common. Population pressures in these two areas have increased land values tremendously, and land is generally not for sale. Reluctance to sell is based not only on speculation mentality but often on well-founded fears of ruinous patterns of development. The new laws, in effect, shift property taxes from improvements on land to the land itself, thus forcing unused or underused land into greater development or onto the market. This, in turn, should lower prices and increase land availability in general.<sup>50</sup>

### Possible Sources of Community Development Land

Now that public attitudes are beginning to change, there are a number of avenues the new land trust could explore for significant tracts of land that might be made available to well-organized groups with community or public support.

**Underused or Misused Federal Lands.** Some of the most attractive federal land to be transferred to community development is held by the military. Along the eastern seaboard much of this land is close to the main population centers. Over the past few years some of it has been returned to private hands or has been left idle as a result of military cutbacks. Small tracts are often sold quite reasonably on a closed bid basis by the General Services Administration. The GSA will normally place anyone on its mail-



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49 "Land Tenure in the United States — Development and Status," U.S. Department of Agriculture Economic Research Service, Agricultural Information Bill No. 338 (Washington, D.C.: Government Printing Office, June 1969).

50 For discussion on the economic impact of property tax, see *Property Taxation: Effects on Land Use*, and Netzer, *Economics of the Property Tax*.

ing list of notices for such land sales for a small fee. (The agency can be contacted by telephone in most major cities). Larger tracts would have to be sought through a concerted political and legislative effort.

**Government-Subsidized Private Land.** Some private agricultural land which has been taken out of productive use by the U.S. Department of Agriculture subsidy programs is ideally suited for community land trust development. Since this land is already being subsidized by public funds, a strong moral — and perhaps legal — case could be made for returning such land to the public domain through a land trust structure.

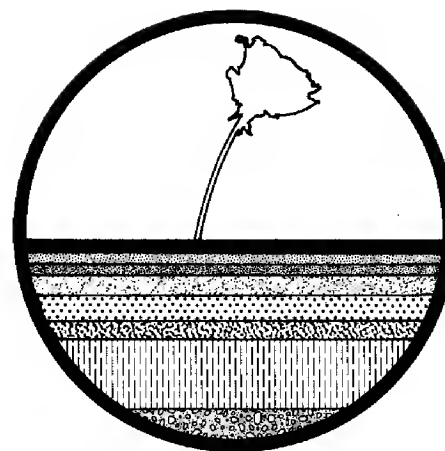
**Ecologically Concerned Private Owners.** Owners of large tracts of land may express interest in divesting themselves of the responsibility of landownership yet desire to retain a sense of trusteeship. Offering the land for sale on the open market opens up the possibility of exploitive development, but transferring the land to a land trust presents an attractive alternative.<sup>51</sup>

If the owner retains a special role in connection with the land it can cause problems, as described in Chapter Four. However, there are several approaches to establishing such an arrangement on a constructive basis:

1. If conservation is a primary concern, the transaction could include covenants specifying that certain parts of the land be withheld from development and left in their natural state.
2. The present owner might become a member of the trust, or might be encouraged to set up a trust or work with an existing organization that could act as trustee of the land to preserve it in the public interest.
3. The owner could be given partial compensation for the land. This could be done directly or in the form of a "land bond" (see following chapter) that could provide him or his heirs continuing income over a period of years. Such an arrangement gives the owner certain tax advantages and, in addition, gives the trust the advantage of owning land unencumbered by a mortgage (which imposes certain restrictions on leasing arrangements).

Indeed, of the several avenues outlined in this section, working with private owners for the establishment of conservation-oriented land trusts is the one approach that has already been used with some success. Some private owners have given lands for this purpose; others have been persuaded to bequeath lands to conservation trusts, a slower approach but one which eliminates the problem of dealing with former owners over the issue of control of the land.

**Tax Sale Land.** On an individual community or municipality basis, one of the more auspicious approaches to establishing a land trust involves property sold for nonpay-



51 A number of avenues for transferring land into a public "conservation" trust have been suggested and implemented. The Open Space Institute (145 E. 52 St., New York, N.Y. 10022) has been active in this regard. For a discussion of the various mechanics that have been used, see Charles E. Little, *Challenge of the Land — Open Space Preservation at the Local Level* (New York: Pergamon Press, 1968-69). It is a relatively small step from the programs suggested in this book to the community land trust, which is perhaps better suited for multi-use tracts.



ment of local taxes. Ordinarily land is appropriated from the owner, sold to the highest bidder, the tax obligation met, and the balance returned to the delinquent previous owner. The town receives its taxes but has no further involvement or interest in the property so long as the new owner can pay his taxes. It would seem appropriate for the community to exercise a more responsible trusteeship role — particularly when tax delinquency is the result of economically depressed conditions. The community should perhaps assume permanent title to the property and lease it back to the previous owner or new owners. This in itself would not ensure the town added income nor accumulation of large areas for administration by a community trust, but it would establish a constructive precedent and provide an avenue for the community to express its responsibility over its own economy and the ability of its people to meet economic demands and needs.

There has already been at least one effort to apply the land trust principle to prevent or offset expropriation of poor people through the tax sale mechanism. In 1971, with the assistance of the Black Economic Research Center of New York, a nonprofit corporation called Black Land Services, Inc. was formed. The new corporation plans to focus its main effort in the Sea Island coastal area of South Carolina where the established but impoverished black community is rapidly being expropriated through tax sales, foreclosures, and a mechanism of dubious constitutionality, "partition sales." Among its first goals is the "development of a mechanism whereby, when necessary and desirable, the corporation can participate in land sales as a buyer, holding land in an eleemosynary capacity, either in behalf of the individual owner or in the name of the community."<sup>52</sup>

**Legislative Action.** One of the few cases of actual legislative activity that could result in the availability of good but reasonably priced land is in California, under the Reclamation Act of 1902.<sup>53</sup> This act, still on the books, provides that farmers accepting subsidized water must agree to sell any of their federally irrigated holdings in excess of 160 acres within ten years. Through one device or another, large landholders have escaped selling their excess lands — and in the few instances where owners have agreed to sell, the price has been so high that there were no buyers.

As of this writing, legislation to enforce this law is pending in California which would authorize the federal government to buy up all properties in reclamation areas that are either too big or owned by absentees. The government would then resell some of these lands at reasonable prices and on liberal terms to small farmers; other sites would be retained for new cities or undeveloped open space. Plans to structure these types of land use around cooperatives have also been introduced, and the land trust might well be the most suitable type of agency for this purpose.

**Straight Purchase.** The most common approach to date — especially for the smaller local experiments that have less political leverage and more modest financial

52 Shimon Gottschalk, "Rural Land," *Community Economics* (Cambridge, Mass.: Center for Community Economic Development, May 1971). For more information, write: Black Land Services, Inc., Penn Center, Beaufort, S.C.

53 See footnote 12, p. xv.

# How to Buy Land

## When To Look

Land buying, like any matter concerned with the land, is seasonal. The buying season ends with the first snow — do not buy land you cannot see — and opens up again in late spring. The best buying time is August and September, when you can be sure that springs and creeks are persistent.

## General Approach

Like courtship, land buying is best approached with patience and delicacy. First determine the general area you want to live in. Take into consideration what you want to do with the land, the kind of neighbors you want, whether the sea or mountains are vital to your well-being, etc. Then drive around, picking a *region*, not a farm.

When you have selected a general area, move there. Rent a house or set up a long-term camp and settle in. Then start looking at property.

Buy a Land Status map from the local land office (or get a topographic map that shows lot numbers). This, along with a clipboard and pencil, will be your hunting equipment.

There are three main approaches to buying land: through real-estate agents, country talk, and by investigating land you find yourself.

Real estate agents aren't used as much in rural areas as they are in the city, but they're convenient, so start with them. Check back every few days to see if anything has come in.

The usual way of finding land in the country is to hear of it by word of mouth. Spend as much time as you can rapping with local people. The best information will come only after half an hour or so of talk. Life moves at a slower pace in the country; don't come right to the point in a businesslike manner, let the conversation ease toward the topic of land.

Talk to anybody who is available to the public: shopkeepers, auto repairmen, post-

masters. Write down information they give you. Keep a list of leads and follow them out methodically. In the process of finding your land, you'll meet many nice people and learn a great deal about the countryside.

If you discover an interesting piece of land that isn't being used, get the lot number from your map. The land office will let you see the deed for a small fee. From the deed you can get the name and address of the current owner.

## Points To Check

**Lay of the Land.** The lay of the land is its orientation in topographical makeup. Farm land should be level, or sloping to the south, east, or west (in that order). Also look at the mountains around you to see how much sun you will have in the winter. Drainage of both water and cold air is affected by topography. Cold air runs downhill in the evening just like water. A field in a valley can have a growing season two weeks shorter than one on a hillside.

**Water.** Even in areas of plentiful rainfall, it is possible to have water problems. Make sure you will have enough water for your use. The ideal situation is a spring or clean creek high enough above you that you can put in a gravity water system. A gravity system generates about 4/10 pound per square inch of water pressure for every vertical foot of fall, so 100 feet of fall will give you 40 pounds pressure, enough to run most appliances.

A lack of (clean) surface water means you will have to dig a well, a nuisance at best, with pumps, pressure tanks, power sources, etc. and it may be expensive if you have to go deep. Ask your neighbors how deep their wells are.

Too much water can also be a problem. If you are by a river, check for signs of flooding. Marsh grass or skunk cabbage means boggy land much of the year and possible annual flooding. Bracken grows only above the flood line.

**Improvements.** The improvement most valuable to you will be clearing. Clearing land by hand is extremely slow and by machine expensive. Buildings, even badly run down ones, are useful even if you plan to do your own building, and a homesteader needs a surprising number of sheds and outbuildings.

**Soil.** Arability of a piece of land depends on its steepness, ground cover, and the condition of the soil. Unless your land is very expensive, terracing is not worthwhile. And clearing is either slow or expensive.

The easiest way to check the fertility of soil is by the condition of its vegetation. If it is waist high and lush, the land is very fertile and probably subirrigated. If you can see soil or moss between the plants it is probably thin and poor. Dig a hole to determine the depth of the topsoil. Six inches is about minimum for most crops. Sandy soil means good drainage, easy working, probably low fertility and heavy water demand. Rocky soil grows plants as well or better than one free of stones, but is hell on cultivation tools, and clearing stones is hard heavy work.

## Making the Deal

In the process of purchasing the land we learned a great deal, and have formulated a few hard and fast rules for buying land.

1. *Never be in a hurry.* Patience is essential. Regardless of how eager you may be to purchase land, take your time and make sure that everything is exactly to your liking. Check everything out very carefully with the local officials before signing or paying for anything.

2. *The Whole Earth Catalog* has repeatedly stated that there is free land still available for homesteading today. This is nothing more than wishful thinking on the part of a dreamy city freak. There is no free land available anywhere in this country, least of all, not from the Federal Government — unless you happen to be wealthy.

After exhaustive dealings with the Bureau of Land Management we have concluded that

it is preferable to stay in the city rather than fight through a million miles of red tape in order to purchase land from them. It is impossible to obtain a definite yes-or-no answer from the BLM, and the problems of attending their auctions at a specific time in some far away state are not to our liking either.

3. *Never take a realtor's word for anything.* Check things out yourself. Talk to the local tax commission, contact the well drilling companies personally and — if you don't look too freaky — talk with the neighbors or someone in the area. They know more about land than the majority of us ever will.

4. *Make sure that the title is clear on any property you purchase.*

5. Never make the mistake of purchasing a tract of land away from a highway that does not have *access rights*. If you do you may find yourself hemmed in with no legal road away from your property.

6. Remember, the best way to find land is to go out and look for it yourself by inquiring in the area. Realtors always ask for more than the land is worth. If you are able to purchase land directly from the owner, you can usually save money, especially if you pay cash.

7. Most of the Western States have *tax land* that has been confiscated. The state is usually willing to sell it for the amount of the tax that is owed on it. This is by far the least expensive way to acquire land but you usually have to be in the area where the sale is taking place at just the right time since such deals do not usually last long.

8. Whenever possible, *pay cash* for everything you purchase.

9. When it comes to buying land try to *be a visionary*. Barring what the insurance companies call "Acts of God", what will the land look like in ten, twenty, fifty years? Make sure that the land you purchase is really right for you, and find out what plans the State has for development of the

property around yours. A freeway or subdivision probably won't fit very well into your plans for the future.

Excerpted from *Land Buying for the Innocent*, a monograph by Alternatives, The Modern Utopian, P.O. Drawer A, San Francisco, (Calif. 94131), 1971.

resources — has been the acquisition of land through a straight purchase transaction at competitive prices, most often from private owners. The majority of land acquired by the Jewish National Fund is obtained this way.

This approach has a number of problems and pitfalls, the major one being, of course, the weighty financial commitment that must be met from the beginning in obtaining any tract of significant size located in an economically viable area. On the other hand, there is an important advantage: the site can be chosen on the basis of its merit for a specific community land trust objective.

### **Buying Land**

**Choice of Site.** Among factors to be considered in selection of a rural land site are size; topography in relation to projected uses (building, farming, etc.); soil fertility; accessibility; water resources; and distance from existing towns or population centers. In the urban setting, other factors might become more important, such as the proximity of services (transportation, recreation, etc.); taxes; existing structures (if any); zoning; relation to any long-range urban renewal or transportation plans; and perhaps ethnic environment.

In selecting sites for a rural new town type of land trust the purchaser should be aware that proximity to an existing town or city usually increases land prices but at the same time affords the availability of services that the new community will probably not be able to provide — at least not at first. It also broadens the options for building an economic base. Depending on the constituency involved these may or may not be important factors.

Also, depending on the nature and goals of the constituency, existing improvements on the land (buildings, cleared land, irrigation facilities) must be carefully evaluated. In general, groups investigating sites for a new community tend to undervalue existing improvements. Even though these might not conform to the ideal plan, they are often found to be a vital supplement to the available energies and financial resources during the initial years.

**Land Prices.** As anyone who has “shopped” for land can attest, prices vary widely depending on (a) the geographic location and economic environment, and (b) the subjective judgment of both sellers and buyers. In the case of the former, the premium paid for the site will normally be realized through the greater economic return that can be derived from the use of the land. Whether or not the premium should be paid depends on the overall economic plan of the group.

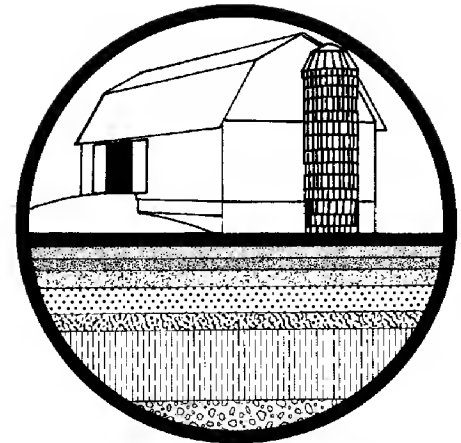
Regarding the subjective nature of quoted land prices, we can only say that this presents a ticklish problem and can seriously confuse the assessment of land value in real economic or even aesthetic terms. Professional appraisers can sometimes be used to advantage in this situation.<sup>54</sup> With the right approach, the problem of “jumping”

54 Reading Appendix 4 carefully, one might notice that New Community Trust sought appraisals on the farm it purchased, and the spread (\$30,000, \$40,000, and \$50,000) tends to confirm the subjective nature of real estate pricing. Even professionals may be at a loss to pin down realistic values. 46

land prices, if not avoided completely, can at least be minimized. When it becomes known that a community group or trust is in the market for significant acreage, the word will spread fast and quoted land prices hiked. When a group of poor or minority people are involved, the reluctance to sell is increased and prices further inflated.

There is no easy answer to the problem. It is important to work with discretion and perhaps to secure the services of a sympathetic broker or use a straw, or stand-in, buyer. On the other hand, experience has proven that rushing in and acting fast is the wrong solution to the problem.

Patience, common sense, and making the right local contacts are probably the most important ingredients to intelligent land purchase. Rather than include specific guidelines or useful experience at this point, we recommend pursuing some of the books and articles which have been devoted to the subject.<sup>55</sup>



55 Irving Price, *Buying Country Property* (New York: Harper & Row, 1972). The fact that this book became a bestseller almost overnight indicates the intense interest in rural land throughout a broad cross-section of our society. See also *Prerequisites to Community: Land Buying*, excerpted above, a brief but readable monograph published by Alternatives, the Modern Utopian, 1971 (Los Angeles Free Press, P.O. Drawer A, San Francisco, Calif. 94131); "Notes on Tax Forfeit Land Sales," *Mother Earth News* 13, January 1972 (Mother Earth News, 1899 Hubbard Road, North Madison, Ohio).

## Chapter Seven: Financing

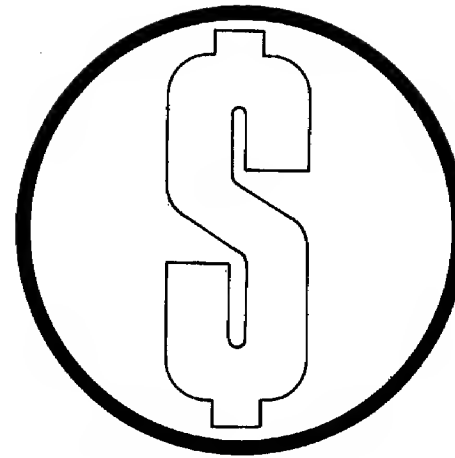
Regardless of the ideals and goals involved, money is the critical ingredient necessary in our society to get almost any kind of program going and to make it work. Among its many functions, money serves as a measure of value and productivity, and as a medium for resource allocation. Money matters are likely to be dominant concerns in acquiring and holding land in trust, but for the purposes of this chapter the subject of “financing” is narrowed to the problem of land acquisition and land development. (The problem of budgeting and allocating funds once the land trust has been established is not treated in detail in this guide but is a management problem that can be handled by regular accounting and business management procedures. The aspects of financial management peculiar to the community land trust, that involve rentals or other land user assessments as the source of start-up and operating expenses, are discussed in a separate chapter.)

A note of warning seems appropriate at this point: because money is commonly used to measure productivity, the issue of productivity should not be obscured in the context of the community land trust. The land trust does not represent any kind of magic that enables participants to sidestep certain economic realities. It does not in itself necessarily mean free land. And where because of its inherent institutional nature it does acquire and is able to offer “free” land, the trust will probably fail in the long run if the users are not economically productive (in terms of today’s somewhat narrow definition of the term).

It also seems necessary to point out that financing might not be any special problem in at least one specific case — that of the small land trust oriented toward more or less established, middle-class people, if those who plan to be in the resident community continue to maintain their income base.<sup>56</sup> If members of the organizing group have the typical middle-class resources (homes, some savings or investments, etc.) and can continue a middle-class income, this in itself constitutes adequate financing if the initial goal is to serve just that group. If each family liquidates its property and the proceeds are pooled, there should be enough money to purchase a larger parcel and develop the necessary housing. In fact, with the natural efficiencies inherent in scale, the finances of each family unit should be eased rather than strained. (Of course, once the land is acquired, it might be brought under the umbrella of a larger, regional trust.)

But the community land trust concept is of greater significance in its immediate relevance for special groups, such as ethnic minority groups and low-income people, especially the working poor who under present conditions cannot obtain decent housing in a healthy environment. The most immediately feasible land trusts addressing this problem — and those requiring some form of special outside financing — include the following:

1. large-scale, rural town planned for mixed income levels;



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<sup>56</sup> Regardless of popular associations and assumptions, there is no inherent reason why those involving themselves in a community land trust need undertake deep-reaching cultural or economic changes — although out of a growing political or environmental awareness they may want to do so. There is nothing in the land trust idea itself which links it with any imperative to sever ties with the larger economy or with a concomitant lower level of consumption. Bryn Gweled Homesteads (see Chapter Two) is an example of a “middle-class” community, one which differs from other middle-class communities primarily by the fact that it is protected by a land trust.

2. low-technology, semi-subsistence rural community with minimal involvement in the larger economy;
3. post-industrial laboratory, such as the experiment proposed for a village in Maine, with complete recycling of wastes, nonpolluting energy production, high percentage of food internally produced, etc.;<sup>57</sup>
4. new town in-town;
5. scattered site urban housing for poor people.

The people who can benefit the most from the community land trust are also those groups that will probably have a harder time getting financed under any conventional land acquisition arrangements. This consideration not only poses the moral dilemma of whether such groups should be given free land, but also dictates investigation of other, longer-range financing possibilities as well as methods of financing improvements.

#### **Financing Land Acquisition: Current Choices**

Portions of the following material dealing with *land acquisition* are applicable primarily to the types of large-scale land trust experiments suggested above. The section on *financing improvements*, on the other hand, is relevant to the smaller land trust experiments as well, since projects on any scale rely on the leasing basis of the land trust principle for maintaining internal financial energy.

**Land Gifts.** In India, the growing *Gramdan* movement based on the "land gift" or "village gift" concept has an economic ground. In the United States, on the other hand, land gifts are most often made in the interest of preserving land for conservation purposes. With the proper kind of encouragement, realignment of tax laws, and growing social consciousness, land gifts for community development (urban and rural) may be forthcoming in the United States. Even without the foregoing conditions, the community land trust is likely to receive gift land because it is a nonprofit, quasi-public organization with socially constructive goals — and particularly if contributions to it are tax deductible. Although such gift land can be a very valuable asset to the new land trust, the necessities of land use planning may require purchases of other parcels since free land is often less desirable from the standpoint of economic development and would need to be supplemented.

**Grants and Other Gifts.** Gifts and grants in the form of financial contributions are more likely than gift land — and also perhaps more desirable since the trust will then be able to select the land that most nearly meets its needs. Contributions from individuals may well be indirect, as in the case of New Communities, Inc. wherein certain nonprofit groups offered grant money and money to guarantee loans. Substantial grant money, in fact, is often available from foundations, and directing fundraising efforts toward the foundations is traditionally the more effective approach.

57 "Is Maine's Past Maine's Future?" *Maine Times*, 3 March 1972. 49

Key to obtaining foundation money is a well-developed plan that addresses basic social or economic problems, persuasive and competent spokesmen (both grassroots and specialists), and a properly written funding proposal. Here is another reason to use an existing organization as a trustee since such organizations are likely to have the experience and contacts that will make grant money more readily accessible.

Grants from governmental agencies at all levels (municipal, state, federal) should be investigated; however, such agencies more often provide loan money and funding for planning and development. In the case of New Communities, Inc., a small federal grant was obtained for planning. A second grant for help in development was approved at the federal level, but then vetoed by the state.

**Social Investment (Loan) Funds.** Churches, some foundations, and some individuals are significant potential supporters of land acquisition by community land trust groups. Such loans will customarily be secured by a note, by guarantees (collateral) furnished by individuals or other groups, or by the land which is purchased (second and third mortgages). The types of collateral that may be available to guarantee loans include bank books, negotiable bonds or other securities, and title to land owned free and clear by the guarantor.

Although the various church denominations would seem to be the most fruitful source for social investment loans, there is often difficulty in releasing these funds. This stems not only from the conservative nature of those responsible for handling church investment funds in many of the denominations, but also from the fact that most states have "prudent investment" laws that force churches and similar organizations to keep a rather large proportion of their investments in relatively secure bonds and stocks. Nevertheless, these laws should not be allowed to discourage those seeking church investment money. Trustees who by their nature would prefer AT&T or municipals to a land trust will perhaps tend to exaggerate their restriction under such laws. Most churches actually have a great deal of unrestricted investment capital as well as funds subject to such laws.

For those land trusts that seek to serve primarily disadvantaged groups, it is likely that the social investment funds of churches and foundations, with their growing portfolios, will become more significant in the future. These funds may be available at lower than market interest rates on bonds or debentures.

**Conventional First Mortgage.** This conventional approach to land financing — using banks, insurance companies, or other lending institutions — is often successful, especially if there are credible back-up guarantees. Unions, pension funds, and similar sources might also be investigated. Some banks are reluctant to mortgage bare land without any improvements, which can lead a community land trust to choose improved land over unimproved land. If there is already a mortgage on the land being purchased, it often can be assumed (as was true for New Communities, Inc.).



**Financing Land Cost from Rental Income.** Whenever investment money is used to purchase land, it may be necessary to, in effect, finance that investment (both interest and principal) out of rentals charged for use of that land. This is true whether the land is purchased by low-interest or no-interest social investment money or through regular institutional channels. The only difference is the amount of the burden and the speed at which it must be paid off.

**Financing Land Acquisition: Methods To Be Investigated**

**National Land Use Policy.** One of the best long-range possibilities for easing the problem of land financing is a national policy toward that end. Besides grants and tax reforms to tilt the economy in a more favorable direction, less sweeping programs could make presently owned federal lands available at no cost or minimal cost for rural new towns based on the community land trust concept. Such programs might also include exchanges of federal for private land.

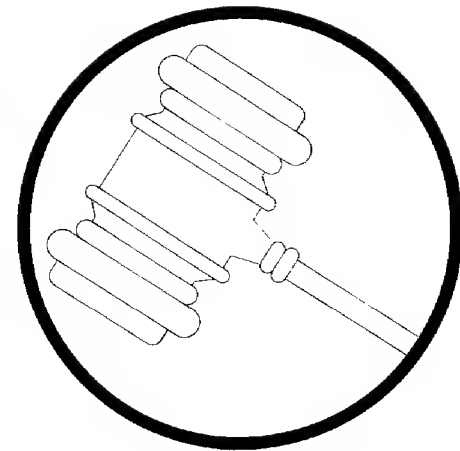
**Securities in Place of Mortgages.** If securities are used to replace mortgages in financing a land trust, this would free the land of all encumbrances and facilitate the development of housing and perhaps industry. Given the socially affirmative nature of the community land trust, it is possible the federal government could be persuaded to guarantee the bonds (debentures) of land trusts, making them more salable. Another source for such guarantees might be a government-funded public corporation, such as the Opportunity Funding Corporation.<sup>58</sup> Private guarantees might, in addition, become available from some of the larger foundations.

Unsecured notes have been used to finance at least one land trust, New Community Trust, which raised about \$15,000 through the sale of 6-1/2 percent, 30-year notes to help purchase its farm property in New Hampshire. Interest is being paid on these notes on an annual basis. The memorandum describing New Community Trust and the notes is included as Appendix 4.

A debt instrument in the form of a debenture or bond designed like the U.S. Series E bond would seem to be especially suitable to the land trust. All payments on principal and interest are deferred for five or ten years, thus removing the heavy burden of debt repayment during the early years when the trust and its lessees are in a relatively weak position and need all of their resources for development.

**Legislative (Special Tax) Proposals.** In the future, significant funds might become available through special taxes, analogous to the highway trust fund. The latter is a precedent (of sorts) since the source of the tax is linked directly to its use: the gasoline tax is used to build more roads.

There have been several proposals to create special state taxes to establish funds that will be used to offset the ecological price of development or technology. Vermont in 1972 enacted the nation's first tax on non-returnable containers, the proceeds to be



<sup>58</sup> The Opportunity Funding Corporation, Washington, D.C., is a recently formed non-profit organization established with initial funding from the federal OEO program. Its purpose is to act as a leverage fund to encourage private investment in minority business or other innovative businesses related to low-income people or the poverty program.

used to develop better methods of disposing of solid wastes by municipalities and for research on more efficient recycling methods.

So far there has been nothing quite this concrete in the way of tax-based funds for land banks or land trusts. But there have been various suggestions, and people interested in better land utilization can support those seeking to translate the suggestions into legislative action. Whether or not taxes are established with proceeds available to finance community land trusts, the effect both in the educational and political sense cannot help but be healthy.

One suggested approach to the land financing problem is to tax conventional land developers. Regardless of what they do to land, a percentage of their profits — or of their operating capital — should be used to establish land banks or other trust lands to be developed in ecologically sound ways. One group of landscape architects has introduced the concept of "Destruction Value"<sup>59</sup> whereby, from an ecological standpoint, all the features of every square foot of land (plants, wildlife, water resources, etc.) can and should be measured in economic terms. When a developer eliminates these features through "improving" the land by clearing, excavating, or dredging, he should pay to a public body a "destruction penalty" equal to the appraised ecological cost of his development. These funds would then be used "only to administer programs for land acquisition, protection, and the development, management, and maintenance of greenbelts, parklands, wetlands (marshes), shorelands (beaches), future living reserves, etc." The logical recipient of such funds — particularly those for "future living reserves" — should be a land trust of some sort.

**Inflation-Protected Debt Instrument.** Since landowners often acquire land because it appears to be a safe, inflation-proof investment, an inflation-proof debenture — or even first mortgage — might appeal to potential land sellers.<sup>60</sup> (This type of instrument is not a new idea and has been used to some extent in Israel.) This approach would arrange a mutually acceptable method of determining the inflation rate, and the percentage of a given year's inflation would be added each year to the remaining principal. The "inflation coverage" could be substituted for the interest rate, or could be used in addition to a relatively low interest rate.<sup>61</sup>

Some statistical sources providing an index of inflation are currently available in the form of the U.S. Dept. of Labor commodity wholesale price index ("cost of living index"). A continuous nongovernmental statistical program designed specifically to calculate the "inflation coverage" needed for such debentures is another possibility.

Using the proceeds from such an offering to acquire land which will never be sold for speculative gain seems particularly appropriate. Each party gives up something: the land trust gives up speculative gain on its land; the investor accepts lower return on his capital than he might get elsewhere. And each party gains: the land trust gains

59 Robert W. Ramsey, "How to Charge Developers for the Environmental Destruction They Cause," *Landscape Architecture Quarterly* 61: 3, April 1971.

60 The International Independence Institute is investigating the practicality of implementing investment programs based on the inflation-protected debt instrument.

61 This guarantee, of course, would also work in reverse should deflation occur and debts have to be repaid with money that has increased its purchasing power. Regardless of inflation or deflation, this type of arrangement places both creditor and debtor on an equitable basis.

lower carrying costs on its debt; the investor gains the security of inflation protection. Thus there is a degree of equity in the stance of both parties.

### Financing Improvements

Because building on or otherwise developing *leased* land is not the customary method for private individuals or nonprofit organizations, and because neither private nor government loan agencies are always familiar with how this is done, land users may at first have difficulty obtaining development loans. After all, they cannot offer the land as collateral.

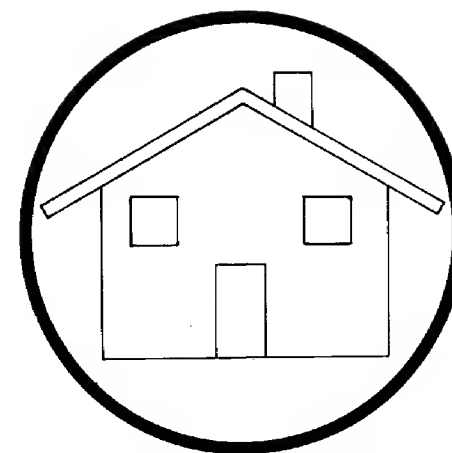
There are, however, precedents to this type of development: private industry and commerce have no problem in obtaining loans to finance the construction of buildings or plants on leased land — land often owned by religious or educational institutions. But it remains to be seen if a community development corporation, composed of and for the benefit of the poor or minority groups, will be considered a “credible risk” for such loans.

For individuals establishing themselves in a community land trust, the best way around this problem will normally be an arrangement called “subordinating the interest in the lease” in favor of the creditor. This procedure has been approved by the Federal Housing Administration as well as by banks in the United States. When development is cooperative, it can be argued that security is greater than in the case of individuals since the risk is distributed across all those involved.<sup>62</sup> When it is foreseen that land users might want to finance housing or other development by subordinating interest in the lease, organizers of the trust should write a provision in the bylaws that requires them to obtain written permission from the trustees.

**Housing Programs.** Major funding for housing on the community land trust comes under HUD (Housing and Urban Development) 235-236 programs, and programs sponsored by the Farmers Home Administration (FmHA). Cooperative housing, and housing projects with the sponsorship of a nonprofit organization, can be financed under these programs at rates well below the market (as low as one percent); moreover, in the case of HUD programs, rent supplements are available for families whose income is below certain guidelines.

HUD programs are designed for relatively large-scale developments of 100 units or more. FmHA programs are usually a bit easier to take advantage of; in fact, such programs may well be the only ones available in rural areas and for financing single family dwellings. A number of states also have agencies to provide low-interest loans for housing designed for middle- and low-income people.

**Mortgaging to Lessee: Bryn Gweled Model.** Home building at Bryn Gweled Homesteads has been financed under a mortgage arrangement between a conventional bank and the lessee, supplemented by various affidavits and guarantees. These provide for



<sup>62</sup> For references to federal regulations covering loans where leased land is involved, see: Circular FHA 4441.11, April 1970, Section 236, “Processing for Projects with Ground Leases”; Instructions for Leasehold 207 Projects; Requirements for Leasehold Financing, under Section 204-b of the National Housing Act, as amended; FHA Form # 2372H (Rev. 2/67); VA Form # 26-64506, an excellent example of a typical *lease form* that can be used in many instances.

the following: in the event of default, the trust corporation would agree to relinquish title to the lessee's land if there is a foreclosure. But to prevent foreclosure, the bank would give the trust corporation a chance to make the delinquent payment. The lessee would make a commitment to the trust corporation to be liable for any payments the corporation has to make to the bank to clear a default on the mortgage. (The text of documents used for this purpose at Bryn Gweled is included as Appendix 3.)

**Borrowing on Behalf of Lessee.** In the above arrangement, the trust is in the final analysis responsible for the mortgage obligation (if it wants to prevent loss of the land in the event of a default). From this arrangement it is not a large step for the trust to be the borrower and re-lend the money to the leaseholder. The trust's financial arrangement with the leaseholder might be considered unsecured, although any equity (cash or labor) that the lessee puts into the building might represent a form of security. An arrangement similar to this in principle is often used overseas for various kinds of cooperative housing projects (i.e., the agency or organization holding title borrows the money in its own name and then re-lends it to individuals having homes within the project).

**Mortgage as a Jeopardy.** All schemes to mortgage land to finance improvements should be considered dangerous by those concerned with the long-range security of the land within the land trust. In light of this concern, granting temporary title to make parcels mortgageable would not be recommended.<sup>63</sup> Such encumbrances on land are strictly avoided by the Jewish National Fund. Shimon Benshemesh, the director, offers the following precaution:

It is essential to prevent the mortgaging of the title to the lands that are owned by the trust, even despite the clear need for loans and the necessity of using lands to guarantee the funds. Otherwise, havoc can be caused to the underlying principles of the trust. In the case of the transactions of the JNF, there is room only for a floating charge or similar provision for a very limited period of time, and certainly not for a mortgage on the ownership rights of the Fund. The individual who wishes to develop the land can only mortgage his lease-rights and nothing else.<sup>64</sup>

**Second Mortgage Investment Pool.** Institutional investors and private individuals should be willing to participate in a "second mortgage pool" to help lessees finance homebuilding or other improvements. Although the land cannot be used to secure such loans, the risk to any individual investor is spread across the total number of borrowers from the pool; hence such investment should be available even from socially uncommitted parties at a moderate interest rate.

An example of the use of such investment instruments to establish a pool of second mortgage money is the Connecticut Housing Investment Fund (CHIF).<sup>65</sup> In this

63 Even though loss of mortgaged land through foreclosure might be prevented through an agreement with the bank giving the trust first option in the event of default, there would be no way for the trust to ensure that the recipient of the title would abide by the many other provisions (concerning subleasing, land use, etc.) that would bind him under the leasehold arrangement.

64 Shimon Benshemesh, letter to Robert Swann, 7 December 1971.

65 Connecticut Housing Investment Fund, 75 Pearl St., Hartford, Conn. 06103.

program, bonds are sold to both individuals and institutional investors at relatively low rates of interest, backed by the security of the pool of home buyers (and also by a foundation guarantee). A pool like CHIF is not a likely prospect for financing land trusts today. However, once in full operation, with a track record of repayment and a growing number of people using the land, a land trust might be attractive to "hard-nosed" institutions such as insurance companies, and a pool arrangement might be possible.

**Community Betterments.** For some communities, such as a rural new town, one of the more significant expenses incurred before land can be given over to individual or cooperative users results from providing facilities such as roads, water, and power.<sup>66</sup> It may be desirable to seek local or state agencies to assume some responsibility for the planning, financing, and the actual construction of these facilities. Local agencies provide access to both the technical knowledge and equipment needed for the construction of roads, drainage facilities, or water control or supply systems that might involve dams. Some towns and state agencies build ponds free of charge for fire control purposes.

The community might also be able to qualify for federal help under the New Communities Section of the Housing Act of 1969 which contains provision for federal guarantees for the cost of these types of improvements. In addition, the Farmers Home Administration provides funds for this purpose in rural areas. The pending Rural Development Act, if passed, will increase the amount of aid available on the federal level.

66 The Center for Community Economic De- 55  
velopment will shortly publish a study by James  
Morey and Edward Kirshner on community  
ownership as an aspect of financing community  
facilities in new town development. See footnote  
24, pp. 2-3.

## Chapter Eight: Land Use and Social Planning

The issue of planning within the context of the community land trust revolves primarily around the several planning areas (land use, site, and social) and responsibility for them. Because there will be community participation in the planning process, some special considerations should be emphasized. First, planning cannot be viewed simply as a one-time effort to create a design, a map for land use, but must be understood as an ongoing process of decision-making. It is always important to allow for the possibility that changes in plans may be desired at some time in the future — an essential principle in planning for human institutions as well as planning for streets, housing, and sewers. Second, land users as well as trustees will probably wish to call upon professional planners for advice (but not for decision-making).

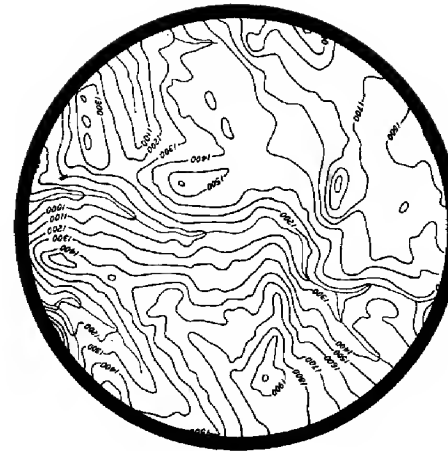
### Land Use and Site Planning

As trustee of the land, the community land trust will be concerned primarily with setting up principles to guide the utilization of land and its resources in the long-range public interest. The key mechanism through which it will exercise its responsibility for land use planning is the instrument of the *lease contract* which it draws up in conjunction with a local group representing users or potential users. The articles of organization of the trust spell out the broad parameters within which choices are available to the users. (For example, a trust whose charter states that its land is to be used primarily for the resettlement of poor families obviously cannot allocate major land resources for conservation.) The lease contracts made in accordance with the trust charter might also stipulate certain restrictions on the use of mineral and soil resources, prohibit sub-leasing, and define rules of inheritance and exchange.

How far the trustees go in the direction of the more detailed “site planning” will probably depend upon the specific circumstances. Users of the land in all likelihood will perform the decision-making in areas not covered by the charter of the land trust and the lease contracts, perhaps with the help of professionals. In the case of a rural new town of significant scale, land use and allocation may be planned by professionals working with prospective residents. The result might be a plan such as that of the *moshav shitufi* shown below. (This general design was used, incidentally, as a model by New Communities, Inc.)

### The Planning Process as an Alternative to Zoning Practices

Unless the community can be chartered by the state as a municipality, the land trust planning process will have to operate within the overall framework of the local zoning requirements. The planning process of the community land trust embraces the same goals as conventional zoning: fair and rational land use. However, insofar as the trust is free to do so, the internal planning administered by the trustees through the lease contract offers an attractive alternative to the commonly misused zoning power of cities and towns.



One of the two major problems with zoning as commonly practiced is that it is often used for exclusionary purposes. For example, in some largely residential towns in Massachusetts two acres is suggested as the minimum house lot size. With buildable land commonly valued at \$7,000 or more an acre, this zoning provision serves as an effective barrier to all but the relatively affluent.

Zoning bylaws, furthermore, are vulnerable to the political influence of property owners seeking to enhance their own property values at the expense of the overall community (or region). Zoning can interfere with free market forces by creating an artificial supply and demand condition that often seems to work to the benefit of existing owners and against the less affluent seeking to enter the area.

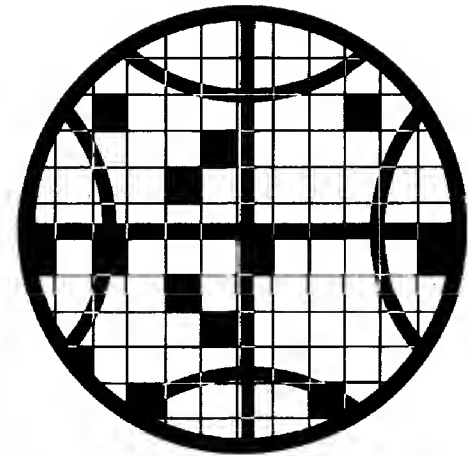
Advocate planners are now well aware that zoning should be considered within the framework of an entire metropolitan area; the crowded ghetto and affluent suburb are two sides of the same coin — separate, but directly related. Zoning decisions in the suburbs are made to enhance property values for owners; zoning decisions in the ghetto have a similar economic motive and an additional disregard for certain basic human rights of the people affected by the decisions. One way to neutralize such decisions is to absorb the value increments through taxation; another is through a regional land trust that can do its own planning and is more likely to be able to avoid the problem of political influence upon the planning or zoning function. There are no private lands subject to unearned value increments from community development; basic land use and allocations are insulated from pressures by land users because they have been written into the trust bylaws and lease contracts.

#### Planning in Existing Land Trusts

**Jewish National Fund.** The Jewish National Fund maintains a planning division of professional land use planners and architects whose function is to develop detailed plans for each group of lessees and work closely with them in the early planning phase. The actual development work (i.e., implementation of the plan) is normally the responsibility of the lessee group and contractors hired by that group.

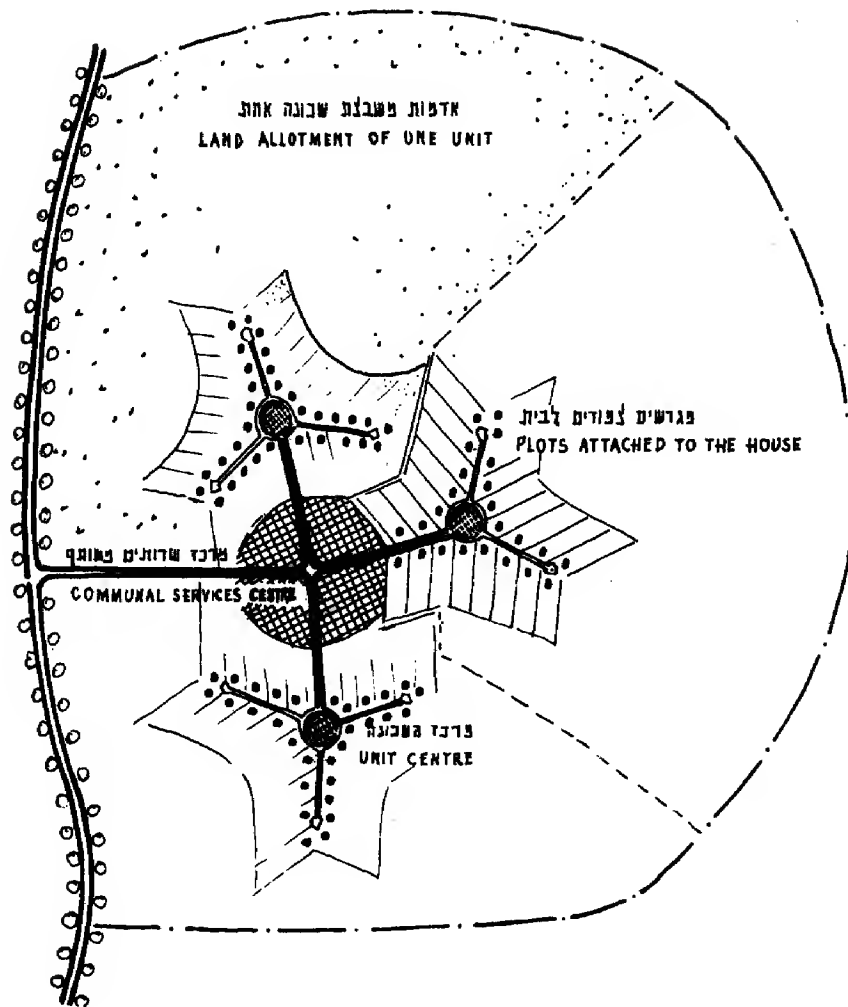
**New Communities, Inc.** In the case of New Communities, Inc., the members of the board of directors have from the beginning been committed to a planning process which assures maximum participation in decision-making by the potential and actual users of the land.

The board will include in its membership users of the land, including present landowners and nonowners and representatives of nonprofit organizations; and that the board will select and hire the necessary experts, who will, in consultation with the users of the land, submit plans pertaining to the productive and economic use of the land. *If conflict in selection of plans occurs, the will of the users of the land will prevail.*<sup>67</sup>



67 New Communities, Inc., minutes, 7 September 1968.

Chart 4: Israeli Plan for a Moshav Shitufi.



Good planning will be closely geared to 58 the social and economic basis of the community. This plan provides for a multi-unit settlement with collective work areas and private farm plots associated with each dwelling (*moshav shitufi*). It is designed for optimal access by the residents to community service areas and farming areas. Three village clusters, each with their own service area, surround a center with the services such as schools, recreation facilities, and community center.

From Professor E. Yalan, *Land Planning of the Agricultural Co-operative Village* (Haifa, Israel: Rural Building Research Centre, Hamakhphil).



**Social Planning**

Social planning is based on the obvious (but often neglected) fact that a community is people, not merely houses and streets. We need to be reminded of this fact because so often in mid-20th century America planning is thought of in purely physical terms.

Social planning includes not only the provision of services such as schools, medical care, and opportunities for recreation but, more important, is concerned with the human issues that relate to the purposes and ideals of the trust and of the residents. Thus, it means establishing the principles and criteria whereby residents will be selected; creating the formal structures whereby the community will be governed; designing ways in which disputes between residents might be adjudicated; and attempting to draw the difficult line between public and private needs.

In the sense suggested here, social planning is a political process, related to but not subservient to physical planning. As a function of the community, social planning is only tangentially the work of the experts. It grows and becomes more complex as the community grows.

## Chapter Nine: Utilizing The Land

A principal challenge for the organizers of a community land trust is the establishment of land use policies. The broader land use concepts must be translated into concrete bylaw provisions that will minimize restrictions upon land users (allowing flexibility in development) and yet ensure that the trust principle in connection with the land is upheld.

### Land Policies

**Subleasing.** A major purpose of the land trust is to help make land available to those who want to use it and to prevent the siphoning off of unearned income by absentee landlords. For this reason, the individual leaseholder will ordinarily be prohibited from subleasing. When a group such as a housing co-op leases land from the trust, however, it will of course sublease to individuals. So the lease contract between the trust and the co-op must provide that individuals leasing from the co-op cannot sublease.

The cost of holding land within the land trust should normally be lower than outside, especially over a long period of time. There will be an impulse, therefore, for lessees to attempt to profiteer from this differential, and strong safeguards must be established to avoid this.

**Resale of Land by the Trust.** In general, land once taken out of private hands and placed in trusteeship should never be returned to the speculative marketplace. Indeed, this is one of the major goals of the land trust concept. Occasionally, in the interest of increasing total trust acreage or consolidating smaller parcels into larger, more economically viable tracts, land might be sold — especially small parcels of gift land. In the latter instance, trust organizers should minimize the chance of land being sold for private gain through several provisions in the bylaws which specify that land can be sold but the proceeds are to be used for land purchases that will be held by the trust, and that any land sale proposal must be approved by at least a three-fourths majority vote of the board of trustees.

**Use of the Holding.** A major requirement of the lease specifies that the landholder use the land personally and occupy the holding, thereby precluding its use by others. If the lessee is not using the property and the leased plot, he should not hold the lease. On the other hand, the lease should grant him maximum freedom to develop the land according to his needs — as long as they conform to the overall goals of the land trust and do not infringe on the rights of others in the community.

It might be wise to spell out in the bylaws a time limitation on absence from the landholding by the lessee: a month, six months, or even a year. Perhaps the trustees should be notified of absences of more than one month.

The lease contract should also state specifically that the lessee does *not* have the right to exploit resources on or beneath the land, such as minerals, oil, or sand. In addition, depending on the locality and overall economy of the land trust, the lessee may be



restricted in his use of certain variable or semi-renewable resources such as water and timber. Any activities by the lessee that might damage the land itself — erosion, removal of topsoil, or cutting of trees for building — should be regulated or forbidden. (See the lease contract used by the Jewish National Fund, Appendix 2c).

**Leasing to Individuals vs. Groups.** A community land trust may lease single land parcels to individuals (and have a separate lease contract with each), or to groups, or to a combination of both. Leasing to individuals may be practical for smaller trusts but can present problems of management in the case of a large rural new town, for example.

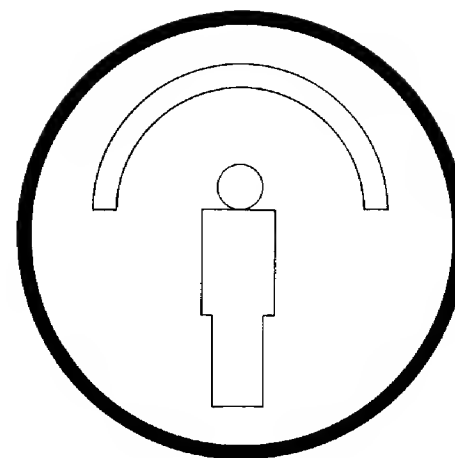
Group leases can be adjusted to a variety of conditions to satisfy the differing needs of the individual members of the groups holding the lease. For example, a tract suitable for farming might be leased to a cooperative, the members of which plan to settle on another part of the trust's land. These same members might set up a separate housing cooperative to lease the land on which they will live, and the housing cooperative could be open to members who are not intending to farm. Each individual would have an agreement with the housing cooperative for the land plot and house he occupied. The provisions of the lease agreement between the housing cooperative and the individual members will be subject to all the conditions and provisions of the overall lease contract between the land trust and the housing cooperative.

**Commercial or Industrial Development.** As mentioned earlier, one of the few cases where subleasing may be permitted is that of cooperative organizations or industries. A community development corporation can be used to stand between the trustees and the land-using organizations — especially if dealing with a large land trust. There can be a single lease between the CDC and the trust, with the CDC extending subleases to organizations or industrial enterprises as required. It is, in fact, more appropriate — as well as more efficient — for a local interest organization (such as the CDC) to assume the responsibility for land use and for guarding against unauthorized subleasing.

#### **The Lease Contract (Land Only)**

The lease contract is the legal instrument that lies at the heart of the land trust concept. It should include all the provisions necessary to protect as much as possible the lessee (tenant) and lessor (land trust), in the interest of the land itself. Several leases used by land trusts are included as appendices.

**Purpose of the Lease.** The purpose of the lease, which provides the overall context in which the various specific provisions will be included, should be stated in the lease contract: what is the land to be used for. In an agricultural lease, for example, the agricultural purpose is spelled out and thus becomes a limiting factor in the use of the holding. The same would be true for industry, commercial property, or land for community buildings. In this way the lease becomes an instrument for planning, and no other legal controlling means, such as zoning ordinances, are required.



Should the community or land trust decide at some point to change the land use (with democratic safeguards protecting the lessee), the lease could be revoked and the lessee compensated for his non-movable improvements on the land, according to their assessed value (see below, **Transfer of Property Ownership**). This procedure should be rare, however; with foresight and valid conceptual planning by the organizers, the original purposes and goals of the trust would be preserved. When land use is to be changed through revocation of a lease, it would hopefully be accomplished under consensus by all concerned, including the lessee. The trust will normally be set up so that this can be accomplished, but it will generally avoid exercising its ultimate power to change the leases.

**Length and Renewal Provision.** Leases to individuals will normally be long-term leases; to commercial or service organizations they may be short- or long-term. The length of the lease is a critical provision for individuals or groups who have invested considerable resources in land development and property externalities, such as a family that is establishing an individual homestead, or a group that is seeking to develop a cooperative agricultural community. In these instances, the land should be leased for a period that can be considered a lifetime or "generation." The Jewish National Fund leases run for 49 years, automatically renewable, with right of inheritance. In the United States, most leases of this type are for 99 years, automatically renewable.

**Inheritance.** It is recommended that the right of inheritance be provided in the lease contract. However, inheritance should be limited to one member of the family — especially in the case of an agricultural-based community with individual farms — to avoid the problem common in many agricultural-based economies in which the farms become divided into inefficient mini-plots. The long-range plan of the trust will hopefully include provision for making land available to those not named in the inheritance clause.

**Termination.** Provision for terminating the lease will normally be one-sided, in favor of the lessee (one purpose of the trust concept being to give secure use-rights to land). The lease may be terminated by the trust (a) if the lessee does not abide by the terms of the lease contract, and (b) occasionally, in the "public" interest, as described above, in favor of planning or consolidating landholdings. If done, it should be on the basis of consensus between the trust and lessees affected. As a safety measure, the lease contract should specify the ultimate right of the trust to terminate, giving the requirements on which the decision must be based. These might be, for example, similar to that required for selling land (three-fourths majority vote of the board of trustees), with one-year notice and compensation for personal property — as well as allocation of a commensurate leasehold if desired by the lessee.

The lessee should be allowed to terminate the lease at any time with due notice. The

notice should probably be somewhat longer than the typical 30 days often required in conventional leases, which will give the trust (or cooperative lessor) time for the somewhat more involved process of locating a new tenant or assessing personal property.

### Determining Rent

The lease will, of course, spell out the method of determining annual rental and its due date.<sup>68</sup> This may be given as a dollar amount but more likely would be set forth as a formula by which the rent will be determined.

The land trust must charge each lessee a rent that takes into account all of its costs less the amount accounted for by subsidies or gifts, if appropriate. The costs that should be included are: (1) taxes assessed by the town and/or county; (2) amortization plus interest on any mortgages or other loan instruments; (3) perhaps some development costs; and (4) perhaps a "use charge," that is, a special surcharge varying with the use to which the parcel is put.

Lessees may represent a variety of land users: individual families involved in agriculture; non-agricultural wage-earners; housing cooperatives; nonprofit corporations in farming, industry, education, or conservation; or for-profit industrial or commercial users. In light of this variety, the trust should devise a method for allocating its costs on an equitable basis. This method will vary considerably depending on how the land was acquired, its financing load on the land, its constituency, and its philosophy. In the tax enclave community, for example, the basis will be "site value" (see Chapter Two). The overall principle will be to place the burden where it can best be carried; this generally will mean placing the heaviest lease-rent on any commercial and industrial land use.

**Apportionment of Land Costs and Other Considerations.** In the case of a regional land trust, certain parcels might be gift land, and others purchased. An advantage of this larger trust is that the land costs can be apportioned across the whole trust, with compromised, moderate rentals for all.

In keeping with a concern for ability to pay, when costs are low because of gift land or other subsidies, as mentioned previously it might be desirable to relieve some members of the resident community of land rent completely. However, some feel that in any case a token charge should be made — even if the land is owned by the trust free and clear, and even when users may have low incomes.<sup>69</sup> The major allocation of such income by the trust will be to purchase more land, thereby developing the momentum which is implicit in the land trust concept.

Rentals on land held by the Jewish National Fund are apparently based on both land evaluation and ability to pay:

68 A particularly detailed description of a basis for rental charges appears in the Suffern, N.Y. lease contract (Appendix 2a).

69 Another basis for this charge (or perhaps the same) is stated by Griscom Morgan, who suggests charging each settler a minimum of 3 percent annually of the market value of the land he leases to "recompense society for the privilege of using part of the common land heritage, thus contributing, according to community decision, to causes consistent with the basic purpose of the trust." Griscom Morgan, "A Land Trust as Basis for a Better Social Order and Well Being," a chapter in *An Intentional Community Handbook* (Community Service, Inc., Yellow Springs, Ohio, 1969).

Leases are made on the condition that once in seven years re-evaluation of the land is made (*not* taking into account increase in value accruing from development by the lessee, etc.) A new rent is based on this re-evaluation. However, lately, the lessee may choose between re-evaluation every seven years or an additional 5% to the rental each year and linking to the consumer cost of living index.

In agricultural lands the rule is a 2% rental from the annual net income of the farmer with a re-evaluation every three years.<sup>70</sup>

A similar principle may be applied for nonprofit corporations: when no income is involved, no rent would be charged. For a group using land as a housing cooperative the charge might be 2 percent of their combined incomes (or Griscom Morgan's 3 percent land use charge). Within the housing cooperative, this cost might be reallocated among the members on the principle of economic rent, as described earlier.

**Private Industry and Commerce.** Rentals charged on land used for commercial and industrial purposes could be determined by the local market. In instances where financing charges are high on the total land trust acreage, rentals from commercial and industrial sites may help offset these costs once the housing has been developed and an employment and market pool created.

#### Improvements on the Land

**Transfer of Property Ownership.** Whereas the land itself is held by the trust for the common good, the form of ownership of improvements (immovable property, such as dwellings, farm or factory buildings) is usually left to the choice of members of the community. Ownership may be individual, cooperative, or corporate. None of these arrangements, however, should restrict the mobility of land users nor dampen their interest in investing capital and labor on improvements. Fair procedures can be worked out for the sale of this immoveable property when the owner desires to move. *The main goal of any such procedures is to ensure that community-generated value increments accrue to the community and not to the individual.*<sup>71</sup>

When an individual wants to leave the community, he should notify the community and upon meeting all his financial obligations be released from his contract. Unless there are specific provisions in the lease contract to the contrary, he may reclaim and remove all the movable personal property that he wants. Immoveable property (held by a departing individual or organization) will have to be transferred in either of two ways:

1. Property will be appraised by a committee either named by the community or operating as part of the board of trustees. It will then be purchased by the community or the land trust and turned over at an agreed price to a new tenant.

70 Shimon Benshemesh, letter to Robert Swann, 7 December 1971. 64

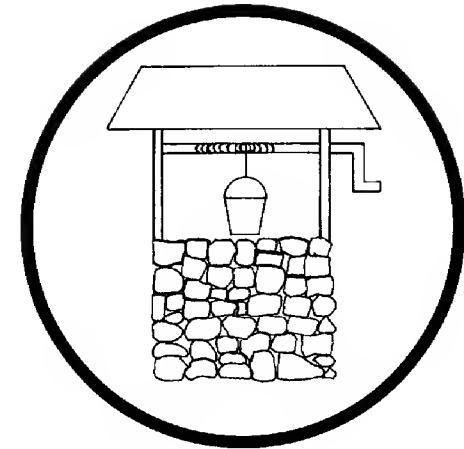
71 A secondary consideration, which could perhaps conflict, is that should an individual decide to resettle outside on private land, he will not be penalized by the undervaluation of his property in terms of the larger economy. In any case, though, he would probably *not* be compensated for the community-generated site value he leaves behind.

2. The departing owner may sell his property directly to the new land tenant, subject to the approval of the community or trust.

The former procedure is the more advantageous for both the old and new tenant since the community might be able to act as the financing intermediary. This, of course, would require some type of contractual agreement between the individual and the community that would perform the function of a mortgage but not *be* one. This arrangement also would prevent hidden land speculation from creeping in, as when charges for improvements actually represent appreciation in land values.

**Sale of Property by Cooperatives or Corporations.** Cooperatives and private corporations will be free to terminate their leases and sell the improvements to approved parties at any time, with due notice given. The land trust will exercise control over speculative increase in the value by establishing a high enough rent on the parcel used by the cooperative or corporation to prevent unearned profit. As with individual property, assessment will be made by a committee, and the property will be transferred to the trust, to the community, or to a new user group. The selling group will allocate the proceeds according to arrangements previously spelled out with its members in the cooperative or corporation bylaws.

**Ambiguous Improvements.** The lease principle rests on the concept of separating the land and natural resources which are not created by man, from man-made improvements. In most cases it is not hard to make this distinction: buildings, fences, and roadways are obviously in the latter category. However, an attempt should be made in the lease to define ambiguous or marginal improvements and spell out how they can be assessed and proceeds of sale allocated. In this category might be included improvement of the land for agriculture through labor and application of capital — draining or irrigating, building up the soil through use of fertilizers, care of timber and planting or care of orchards. Assessing soil values will perhaps be the most difficult measurement. When the bulk of the farming is carried on cooperatively on cooperative land, the problem of transfer of property ownership is greatly eased.



## Chapter Ten: Taxation, Zoning, and Building and Sanitation Codes

As mentioned earlier, the community land trust should seek maximum political autonomy from the beginning. In some cases this will indeed be possible, but more frequently the trust will be operating within the political context of one or more units of local government, which means it will be subject to certain impingements of the larger municipal government, most notably taxation, zoning, and building codes.

### Taxation

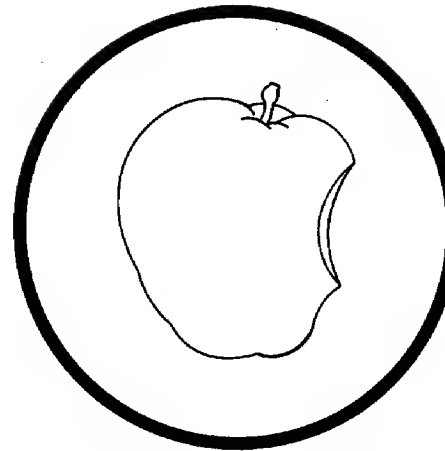
One of the major decisions of the trust is how to respond to the local tax situation. Currently, the local property tax is under fire in many areas of the country with numerous instances of taxpayers' revolts. Within the decade substantial changes are probable.<sup>72</sup> In most towns, over half of the property tax is spent on education, and rising education costs and inequalities are a main source of the current ferment.

The land trust community in all probability will be faced with some kind of property tax on the land and buildings. An important exception, however, is that of a group that meets the necessary requirements for exemption from local property tax assessments — usually a nonprofit religious or educational institution. Even though exempt from local property taxes, the community may nonetheless still wish to pay the equivalent or some token. Assessment of the value of the property is made in any case. In the interest of community relations and out of a sense of responsibility for services provided, voluntary payment of all or some of the assessment might be considered. The Meeting School, a Quaker school community in Rindge, New Hampshire, is exempt as an educational institution yet chooses to make payments in lieu of taxes.

**Redistributing the Tax Burden.** Formation of a community land trust offers the possibility of redistributing the tax burden within the trust community. How fully or conveniently this can be done depends on local conditions (local tax laws and degree of communication with tax collection agencies) and upon how much local political autonomy the community has been able to achieve. The exact basis for this redistribution will depend upon the philosophy of the community, the financial resources of its members, and the way chosen to finance development. The basis might be the single tax principle of Henry George, or the ability to pay.

**Taxes at Bryn Gweled.** At Bryn Gweled, the local township (Southampton, Pa.) assesses and taxes each member as if the land were held privately, and also assesses and issues a tax bill on the land and buildings used communally. All the tax bills are sent to the treasurer of the corporation; as is the practice in Pennsylvania, buildings and land are not assessed separately on the bills.

The treasurer immediately writes a single check to the township for the entire batch of bills (thereby getting a 2 percent discount for quick payment), makes photo copies of the bills, and then sends them to each member who reimburses the corporation in the amount of the bill. At Bryn Gweled there is no attempt to modify the township's



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<sup>72</sup> Recent court decisions in California and elsewhere have stated that the quality of education should not be determined by the wealth (and tax base) of the community. Such decisions may bring about a reform of the local property tax system, perhaps by equalizing assessments and collecting on a statewide basis. Also, the property tax might be lightened by federal revenue-sharing, perhaps financed by a "value added" tax.



assessments on the leased plots. However, the reimbursement to the corporation by the members is a purely internal transaction; there is no reason why it could not be handled on some different basis.

The property tax on the communally owned and used land and building (e.g., the community center) is covered by a portion of the annual community assessment to all members. Last year 18.5 percent of the total land assessment collected at Bryn Gweled went to local property taxes.

Members can deduct from their federally taxable income what they pay for local property taxes (directly and indirectly) and interest on their home mortgage, if any. The copy of the individual local tax bill is used as the basis for the largest part of this deduction. Members may also deduct their share of the property tax levied by the township on the commonly used land and building. (For example, using hypothetical figures, if the total corporation land assessment were \$10,000 and it were divided equally among 100 members, each would be assessed \$100 per year. Since 18.5 percent of the total corporation land assessment goes for local taxes, each member could deduct \$18.50 from his federally taxable income.)

If Bryn Gweled were to redistribute the tax burden, the member's federal income tax deduction would probably still have to be based on the bills as levied by the township. As of this writing, we have not fully explored this area or polled communities to see how this has been handled.

**Other Communities.** The tax situation at the Fairhope Single Tax Corporation, a community in Alabama similar to Bryn Gweled, appears to be about the same as the above. As summarized in the report prepared for the Senate Subcommittee on Intergovernmental Relations,

The rent collected from the land is put into a fund from which State, county, municipal, and school district property taxes, real and personal, are paid for (on) all land held by the corporation. Tax bills to the residents are made out separately, but are all sent to the corporation.<sup>73</sup>

### **Zoning**

In many rural areas zoning bylaws have not yet been enacted, but the pattern is changing quickly. In time, most areas that will be settled by cooperative communities or land trusts will have to cope with zoning requirements often designed to restrict patterns of settlement that differ from those presently dominant in the community. In towns near large urban areas there will be restrictions against multi-family dwellings, dwellings on lots of less than one acre (or sometimes more), and construction on lots without a certain amount of frontage on an "approved town way." These frontage requirements can vary from 100 to 300 feet for each family unit (not each structure).

73 *Property Taxation: Effects on Land Use.* 67  
The mechanics of how local property tax liability is handled in Fairhope, Arden (Del.) and Free Acres (N.J.) are described in some detail in the report, pp. 42-45. Other sources which elaborate on tax issues include: Paul and Blanche Alyea, *Fairhope, 1894-1954, The Story of a Single Tax Colony* (Birmingham: University of Alabama Press, 1956); Harry Gunnison Brown et al., *Land Value Taxation Around the World* (New York: Robert Schalkenbach Foundation, Inc., 1955).

In other towns building may be permitted on a lot of certain minimum size with just an access corridor of certain length and width to the approved town way.

In the community land trust it will be often desirable from the standpoint of efficient land use to develop on a cluster pattern, and from the standpoint of economy or desired patterns of human interaction to build multi-“family” housing. This will be illegal under the zoning regulations in many areas. Equally disconcerting may be zoning regulations against “nonconforming use” of land, based on the desire of the town to keep residential lands used for residential purposes only, cluster industry in one area, and farming operations away from non-farm residences. In the Boston area, for example, several towns have recently passed laws prohibiting the use of manure on fields because of complaints about odors. In residential zones, it is normally illegal to keep livestock or even poultry.

The community land trust will have a number of avenues open for approaching this problem:

1. As mentioned above, it can seek political autonomy, although this will be difficult to obtain. (California and Kentucky have recently opened up a few loopholes, however, as mentioned in Chapter Four.)
2. It may seek land in areas where there is no zoning, although such land may not be suitable for the purposes of the trust. In addition, new zoning codes are constantly being enacted by towns in most states, often under prodding at the state level. It might be noted that “existing usage” is almost always exempt from zoning provisions enacted after the fact. But later development within the land trust would have to conform, unless full plans were submitted and approved by the town when permits were first requested.
3. The land trust might apply for zoning variances. Granting of variances by towns is often a somewhat whimsical process, and sometimes they cannot be obtained. Moreover, it is additionally difficult to get a town to agree to a nonconforming use or zoning variance before the group purchases the land. It might be a dangerous gamble to purchase land, hoping to obtain variances to develop the land as planned.
4. To conform to frontage requirements, the trust could build an “approved way.” This might be a practical solution, depending upon the town requirements. But the requirements may be quite stiff and the cost of meeting them unbelievably high. One rural town in New Hampshire (South Hampton) requires wide paved roads, with sidewalks, a complicated sewer system, and streetlights. Town officials openly admit the law was designed to discourage subdivisions.
5. It may ignore the codes, or count on non-enforcement. Enforcement of these codes is often haphazard; the codes may be on the books only for selective enforcement, based on the political and social realities within the town. This may open up

the need for legal and political action. In some states zoning codes are under fire because of their exclusionary nature. In Massachusetts, the exclusive right of the town to zone has been challenged through the 1970 "anti-snob zoning bill."

6. The land trust may submit a full plan to the town as a single institution or corporation which, in fact, it is. Were a school, church, or business to establish an operation that involved housing and alternate land use such a plan would probably be approved. In the case of the trust, approval of the plan will probably hinge on the way in which the town is approached (or later, if resistance is encountered, on a legal effort).

Working with a town to conform with or be excepted from zoning ordinances can be a long, frustrating experience. In New England, for example, significant nonconforming plans must often be approved by a town meeting. Scheduled town meetings happen just once a year; sometimes there are "special town meetings," but the case is already handicapped if it is the focus of a special town meeting called to deal with this one subject.

On the other hand, political realities are usually based on human realities, and working with the town opens up the chance for constructive human interaction that revolves around the values of constructive community goals and land use. These considerations are what zoning and the land trust both claim to be about.

**Building and Sanitation Codes.** Building and sanitation codes present the same types of problems as the zoning ordinances; in addition, some of the ways they can be dealt with are the same. Enforcement may be on a discriminatory basis. Relations with the town will be important: the ultimate response by the town when codes are violated can be condemning the property and evicting the residents. (However, to do this the town is faced with a long legal process which can be forestalled through appeals.)

Sanitation codes deal specifically with the location of water supplies in relation to sewer disposal, ensuring that streams are protected from sewage and other refuse. These are state codes in many states.

Building codes for fire and sanitation protection will appear to be the most reasonable and therefore the easiest to observe. The key consideration in dealing with both zoning and building codes is to keep in mind that they are *in principle* designed in the public interest. The problem is that these ordinances are subject to distortion by property owners desiring to exclude newcomers or enhance their property values, and by businesses or contractors seeking a certain kind of image or a means to ensure high rates and high demand for services. The challenge is to separate the distortions from the legitimate local concerns and needs, and interact with the town accordingly.

## Chapter Eleven: Mandate for Action

The body of this guide has been devoted to presenting a model that is more or less theoretical at this point in time, and one that draws on the multitude of institutional themes found throughout the world and throughout history to meet today's economic, political, and ecological realities. Certainly there are elements in what we have presented that can immediately be applied in selected situations. This final chapter suggests several of what appear to be the more feasible paths for action to apply the concept on a scale that will allow it to achieve its potential impact.

At least four paths for action appear realistic for creating relatively large-scale, significant community land trusts:

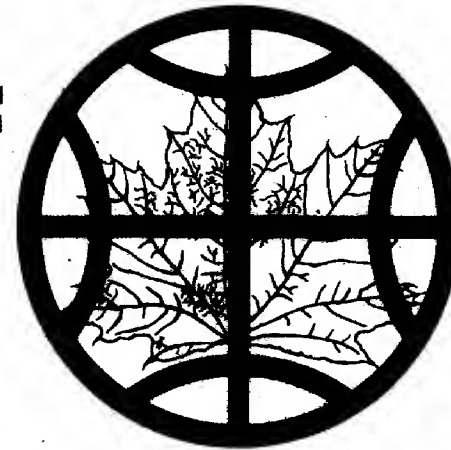
**1. New Rural or Urban Communities for the Primary Benefit of Poor or Minority Groups.** If established to benefit the socially or economically disadvantaged, the community land trust becomes significant as a mechanism to attract investment money, grants, or land gifts that would not otherwise be available. This was the idea behind New Communities, Inc.

In such an effort, the main thrust will grow out of local established organizations or existing community-controlled development corporations. If the idea is imposed from the outside, it will probably be doomed. Secondly, if there are to be any real economic benefits to the residents, there will have to be substantial subsidies in the form of low-interest loans, grants, and land gifts. But even with these assets, in the long run there will be no substitute for economic productivity and good management.

**2. Broad-Based Effort with Legislative Emphasis.** Governmental participation may take many forms: a funding source, land donation, or even selection of board members representing the public interest. It is conceivable that a public effort to have the government (probably state) play the dominant role in financing and setting up a land trust would have maximum educational impact and perhaps result in a constructive alternative landholding institution. But unless the trust were established as a nongovernmental, public corporation, with the majority of the board made up of land users and representatives of nongovernmental organizations, the effort would probably not be particularly inspiring.

One of the more cogent arguments justifying the use of public money in such a project is the cost of migration into urban areas. The migration of any family to a large city inevitably places demands upon its services that cost far more than the tax revenues contributed by that family. This "migration cost" to the city can be roughly quantified. Urban areas should be willing to subsidize — in an amount close to that figure — experiments such as New Communities, Inc., designed to serve as an economic alternative to migration to the city.

**3. Trusteeship of Scarce Resources.** A program advocating stewardship of scarce natural resources might rally strong popular support — and, simultaneously, equally



strong resistance by vested interests. Lewis Mumford wrote in *Technics and Civilization* (1934) that the "private monopoly of coal beds and oil wells is an intolerable anachronism — as intolerable as would be the monopoly of sun, air, running water. . . . Common ownership. . . is the sole safeguard to their effective use and conservation." Today the truth of these words is far more obvious. In the wake of the Santa Barbara oil spill there might have been more public support for transferring control of offshore drilling to a nonprofit trust rather than abandoning offshore drilling entirely, as was suggested. In the hands of a trust the enormous revenues could be used to develop and enforce ecologically sound extraction and transportation methods, research alternative energy sources, and expand the trust's resources.

**4. Regional Land Trusts Formed From Existing Communities.** One of the best short-run hopes for the establishment of regional land trusts is that those involved in the many isolated homestead or commune experiments will place their land under a common trust umbrella, thus creating the basis for a larger framework of trusts.<sup>74</sup> This will not sacrifice but rather enhance their individual goals and their security on the land. Long-term leases would be granted in exchange for title, and guarantees provided for each unit to continue to be used in ways harmonious with its original goals, values, and life style. Each unit would be strengthened; more resources would be available for meeting tax or mortgage obligations; legal services and supportive legislative action would be possible; the land would be safer from seizure to settle personal liability suits or tax liens. There would be more security and energy to develop the individual communities, and at the same time the social significance of the individual experiments would be multiplied.

As of this writing, a movement toward the establishment of a significant regional or single-tract land trust in Maine has grown out of a large conference on community and cooperatives held at the University of Maine in the spring of 1972. Planning committees have been set up and coordination and promotion work is ongoing.

Once the establishment of large community land trusts begins, a force will have been set in motion that should generate its own economic momentum, a momentum that will stem directly from the rental policies that are chosen and indirectly from the education process. Hopefully, land gifts will be stimulated and the government may be encouraged to convert underused public lands — and perhaps implement tax reforms and other economic measures to foster this fresh approach to mankind's ancient "land problem."

74 For a discussion of communities as the building blocks of a new political-economy and as part of a long-term vision of cooperative development in which the locality may be conceived as a basis for a larger framework of regional and national coordinating institutions, see Gar Alperovitz, "Notes Towards a Pluralist Commonwealth," *The Review of Radical Political Economics*, Vol. 4, No. 2, Summer 1972, excerpted from the author's forthcoming *A Long Revolution*.

## Examples of Existing Trust Organizations and Other Groups That Support The Land Trust Concept

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Most of these groups already hold land in trust, and in some cases the buildings thereon. This listing is for informational purposes only; it does not mean that these groups are *necessarily* able or willing to advise people seeking to establish trusts, nor add to the land under their trust "umbrella."

Community Service, Inc.  
P.O. Box 243  
Yellow Springs, Ohio 45387

Land is held in trust, and the group also studies and publicizes the land trust concept and will furnish further information.

New Communities, Inc.  
229-1/2 Jackson St.  
Albany, Georgia 31701

As described in Chapter Three, New Communities holds 5,700 acres primarily for the purpose of developing rural new towns for black farmers.

New Hampshire Rural Land Trust  
Hidden Springs Community Land Trust  
c/o Arthur Harvey  
S. Acworth, N.H. 03607

There are now in trust three tracts totaling about 475 acres in three neighboring towns being developed as low-technology communities.

Voluntown Peace Trust  
RFD #1, Box 430  
Voluntown, Conn. 06384

Holds 40 acres of land and buildings used by New England Committee for Nonviolent Action; it is a legal trust with American Friends Service Committee beneficiary (see Appendix 1).

Gano Peacemakers  
10208 Sylvan Ave.  
Cincinnati, Ohio

Farmland has recently been acquired in West Virginia to be held in perpetual trust for use as a rural community and retreat.

The New Community Trust  
c/o Project Place  
32 Rutland Street  
Boston, Mass.

Urban and rural property (land and buildings) is held in trust for use in community service programs and to house staff.

New England Community Land Trust (in formation)  
c/o International Independence Institute  
West Rd., Box 183,  
Ashby, Mass. 01431

Beginning with its property in Ashby as a nucleus, the goal is to build a regional network of rural, suburban, and perhaps urban land for educational, residential, and agricultural development.

Open Space Institute  
145 East 52nd St.  
New York, NY 10022

Dedicated to the idea of "stewardship" to preserve rural open lands; makes information available on conservation land trusts in given areas.

#### **Organizations Dedicated to Legislative and Educational Action on the Land Problem**

National Coalition for Land Reform  
126 Hyde St., Suite 101, San Francisco, Calif. 94102

1878 Massachusetts Ave.  
Cambridge, Mass. 02140

A coalition of citizens and groups that recognize the need for a more equitable distribution of land in America and believe that ownership of land by those living and working on it is a key to alleviating many economic and social problems.

Coalition for Rural America  
1001 Connecticut Ave., NW  
Washington, D.C. 20036

An advocate group for the nonmetropolitan areas of the United States, independent and nonpartisan; program is primarily to encourage legislation to improve the economy of rural areas.

Henry George School of Social Science  
50 East 69th St.  
New York, N.Y. 10021

Teaches and publicizes the economic philosophy of Henry George, relating the land question to the "causes of industrial depressions and the increase of want with the increase of wealth."

#### **Examples of Organizations That Might Consent To Act as Land Trusts**

American Friends Service Committee  
160 North 15th St.  
Philadelphia, Pa. 19102

The Co-operative League of the U.S.A.  
1012 14th St., NW  
Washington, D.C. 20005

59 E. Van Buren St.  
Chicago, Ill. 60605

Rural Advancement Fund of the  
National Sharecroppers Fund  
112 East 19th St.  
New York, N.Y. 10003

Southern Regional Council, Inc.  
5 Forsyth St., NW  
Atlanta, Ga. 30303



# 1a Appendices: Basic Documents

1b

## TRUST AGREEMENT VOLUNTOWN PEACE TRUST

This trust agreement is made the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_ of \_\_\_\_\_; and \_\_\_\_\_ of \_\_\_\_\_.

For good and valuable consideration, the said \_\_\_\_\_ hereby conveys certain real estate in the said town of \_\_\_\_\_ described in a deed annexed hereto and made a part of this agreement, to herself and the said \_\_\_\_\_ and \_\_\_\_\_, in trust, and the parties agree to hold the same in trust upon the following terms:

1. The name of the trust shall be the Voluntown Peace Trust.
2. The trust shall be a charitable trust in perpetuity.
3. The purpose of the trust shall be the promotion of world peace through educational and other means.
4. The trustees may appoint not more than two additional trustees. In case of the incapacity, resignation or death of any Trustee, the remaining Trustees may appoint, and, if the number of Trustees shall by reason of such incapacity, resignation or death be less than three, they shall appoint, a successor to such Trustee. In case of the incapacity, resignation or death of all the Trustees without appointment of any successor, the American Friends Service Committee, Inc., of Philadelphia, Pennsylvania, shall be the successor of all of them, and shall be the Trustee of this Trust.
5. The powers of the Trustees shall be exercised by majority vote, and a majority of the Trustees shall constitute a quorum for the transaction of business at meetings of the Trustees.

6. The Trustees shall hold and manage the said real estate and any other property, real or personal, which may be given to or acquired by the Trust, and apply the income or principal in whole or in part in any manner deemed by them in their full discretion to be expedient to effectuate the purpose of this trust as above stated.

7. In addition to all of the powers conferred by law and the powers expressly conferred by this agreement, and the implied powers essential or proper to effectuate the powers hereof, the Trustees shall have full power to purchase, acquire, take, hold, own, improve, mortgage, lease, pledge, sell, convey and otherwise handle real or personal property, make contracts, borrow money, construct buildings, and make investments, and to do any and all other things which they may in good faith deem expedient and proper to effectuate the purposes of this trust.

8. The Trustees shall receive no compensation for their services as Trustees, but may be reimbursed for expenses incident to their duties as Trustees.

9. This trust shall terminate at any time all of the property of the trust shall have been expended or distributed in accordance with its purpose.

In witness whereof, we have hereunto set our hands and seals the day and the year above stated.

Signed, sealed and delivered in the presence of: \_\_\_\_\_

\_\_\_\_\_ . . . . .

Caution: Do not use this document without consulting legal counsel. This document was drafted to conform to local law and conditions and might not be legally valid in your state and given your particular factual situation.

## DECLARATION OF TRUST NEW COMMUNITY TRUST

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Dated: October 28th, 1971

1. (names of original trustees) \_\_\_\_\_ hereby declare that they and their successors in trust will hold any and all property that may be transferred to them as Trustees hereunder for the sole benefit of INTERSEMINARIAN INCORPORATED, a corporation organized under the provisions of Massachusetts General Laws, Chapter 180 (hereinafter called "Interseminarian"), said property to be held in trust for Interseminarian. This Declaration of Trust shall be recorded with the Suffolk County Registry of Deeds, Boston, Massachusetts (hereinafter sometimes referred to as "said Registry of Deeds").

2. The purpose of this Trust is to hold real estate occupied by Interseminarian or its officers for the purposes for which it is organized, in trust for Interseminarian, and to hold any other property for the benefit of Interseminarian. The Trustees shall be indemnified and held harmless by Interseminarian from any cost or expense incurred by them hereunder except such cost or expense as may arise out of their willful misconduct.

3. The Trustees, or any three (3) of them, acting together with the consent of Interseminarian, shall have full power and authority to assign, transfer, sell, mortgage and otherwise dispose of all or any part of the trust property, and to grant leases or options covering any part or all of such property, for such consideration and upon such terms and conditions as they in their sole discretion shall deem proper. Any person may rely on the certificate of the Trustees, or any three (3) of them, as to their authority to do any of the foregoing.

4. This Trust may be terminated at any time by Interseminarian, by notice in writing to the Trustees, or by the Trustees by notice in writing to Interseminarian; and this Trust shall in any event terminate (if it has not previously been terminated) thirty (30) years after the date of this instrument. In case of any such termination, the Trustees shall transfer and convey the entire trust estate, subject to any leases, mortgages, contracts, or other encumbrances, on the trust estate to Interseminarian.

5. If said (names of trustees) shall cease to be Trustees, such Trustee shall be succeeded by a designee of the Board of Directors of Interseminarian. Upon any vacancy in the office of Trustee the successor Trustee shall accept appointment as Trustee in writing, and shall record said acceptance in said Registry of Deeds. A statement by such successor Trustee in said recorded acceptance that he has been duly appointed as Trustee pursuant to the foregoing provisions of this Clause 5 shall be conclusive evidence of his qualification as Trustee hereunder.

Any Trustee may resign by a written instrument signed and acknowledged by such Trustee and recorded as aforesaid in said Registry of Deeds. Any Trustee may be removed by Interseminarian without cause by written instrument recorded as aforesaid in said Registry of Deeds.

Upon the appointment of any successor Trustee, the title to the trust estate shall thereupon and without the necessity of any conveyance be vested in said successor Trustee.

Any successor Trustee shall have all the same rights, powers, discretions, exemptions and privileges as if named as the original Trustee hereunder.

No Trustee hereunder shall be required to furnish any bond, security or surety.

6. This Declaration of Trust may be amended from time to time by an instrument in writing signed by the then Trustees and Interseminarian, provided in each case that the instrument of amendment, or a certificate by the Trustees setting forth the terms of such amendment, acknowledged by the Trustees, shall be recorded as aforesaid in said Registry of Deeds.

7. The rights and powers of Interseminarian shall be exercised by the Board of Directors of Interseminarian. Any person may rely on the certificate of the Clerk or Secretary of Interseminarian as to any action by the Board of Directors.

8. Every written contract made by the Trustees shall refer to this instrument and may refer to this Trust as the "NEW COMMUNITY TRUST". Any person contracting with the Trustees shall look only to the trust estate and not to the Trustees individually, or to Interseminarian, for payment or performance of any debt or other obligation of this Trust.

9. No Trustee shall be liable for any error in judgment. Each Trustee shall be liable only for his or her own willful acts or omissions in bad faith.

No license of Court shall be requisite to the validity of any transaction entered into by the Trustees, and the Trustees together shall have full power and authority to execute, acknowledge and deliver all contracts, deeds, and other instruments necessary or proper to put such transactions into effect. No purchaser from the Trustees, nor any person, firm or corporation dealing with the Trustees, shall be under any obligation to see to the application of any money or property paid, delivered or loaned to the Trustees, or to see that the terms and conditions of this Trust have been complied with.

Every instrument executed by the persons who, according to the records in

said Registry of Deeds, appears to be the Trustees hereunder, shall be conclusive evidence in favor of every person relying thereon or claiming thereunder that at the time of the delivery thereof this Trust was in full force and effect and that such Trustees were duly authorized to execute and deliver the same. Any person dealing with the Trust property or the Trustees may always rely on a certificate signed by the persons appearing from the records in said Registry of Deeds to be the Trustees hereunder, as to whether or not this Declaration of Trust has been terminated, as to which is entitled to benefit hereunder, or as to the existence or non-existence of any facts or fact relating in any manner to the power and authority of the Trustees or to any other matter affecting the Trust instrument or the Trust property.

IN WITNESS WHEREOF, said \_\_\_\_\_  
(names of original trustees)  
Trustees hereunder, have executed this instrument under seal this 28th day of October, 1971. (signatures). . . .

Caution: Do not use this document without consulting legal counsel. This document was drafted to conform to local law and conditions and might not be legally valid in your state and given your particular factual situation.

# ARTICLES OF INCORPORATION AND BY-LAWS



## *Bryn Gweled Homesteads*



Southampton, Bucks County  
Pennsylvania 18966

ARTICLES OF INCORPORATION  
BE IT KNOWN That the subscribers, with one  
exception citizens of the United States, and with  
four exceptions residents of the Commonwealth of

Pennsylvania, having associated themselves together for the purpose of organizing BRYN GWELED HOMESTEADS, and being desirous of becoming incorporated agreeably to the provisions of the Non-profit Corporation Law of the Commonwealth of Pennsylvania, approved the fifth day of May, 1933, as amended, do hereby declare, set forth and certify that the following are the purposes, articles, and conditions of their said Association, and for and upon which they desire to be incorporated:

1. The name of the proposed Corporation is BRYN GWELED HOMESTEADS.

2. The location and post-office address of its initial registered office is: Stump Bridge Road, Feasterville Post Office, Upper Southampton Township, Bucks County, Pennsylvania.

3. The purpose for which the Corporation is formed is to acquire and hold a tract or tracts of land in Upper Southampton Township, Bucks County, Pennsylvania, to lease portions thereof to members of the Corporation for the erection of homes, and to set apart, establish and maintain thereon such roads, playgrounds, common lands, community buildings and other facilities for the use of the members of the Corporation resident in the community, their families and licensees, as the Corporation may from time to time see fit to undertake:

The Corporation does not contemplate any pecuniary gain or profit, incidental or otherwise, to its members.

4. The term of the proposed Corporation's existence shall be perpetual.

5. The proposed Corporation will be organized upon a non-stock basis.

6. The assets the proposed Corporation will have to start its corporate functions will amount to \$1200 in cash, and a tract of approximately two hundred and thirty-two (232) acres in Upper Southampton Township, Bucks County, now under option.

7. No intoxicating beverages will be sold, furnished or dispensed by the proposed Corporation to its members under any pretext or for any reason.

WITNESS our hands and seals this 14th day of May, 1940.

EDMUND N. BACON  
RUTH H. BACON  
HERBERT G. BERGSTROM

GEORGIA S. BERGSTROM  
 JOSEPH DIANO  
 WAYNE A. DOCKHORN  
 MARIAN S. DOCKHORN  
 GORDON L. FREDENDALL  
 PEARL D. FREDENDALL  
 WILLARD S. HASTINGS  
 FAITH O. HASTINGS  
 JOHN P. HODGKIN  
 RUTH WALENTA HODGKIN  
 HELEN KNAPP  
 THOMAS S. MICHENER, JR.  
 JEANNETTE S. MICHENER  
 ELLISTON P. MORRIS  
 ANNA S. MORRIS  
 RAY NEWTON  
 BABETTE H. NEWTON  
 THOMAS I. POTTS  
 FLORENCE W. POTTS  
 EDWARD G. RAMBERG  
 SARAH S. RAMBERG  
 MIRIAM WILSON  
 \*E. RAYMOND WILSON

\*Absent at signing.

## BY-LAWS ARTICLE I

### *Name and Office*

The name of the Corporation is BRYN GWELED HOMESTEADS, and its principal office shall be at Bryn Gweled Homesteads, Stump Bridge Road, Upper Southampton Township, Bucks County, Pennsylvania.

## ARTICLE II

### *Purpose*

Section 1. The purpose of the Corporation is to establish, maintain and develop a homestead community for the mutual benefit of all its members, who are seeking stable, productive homes on adequate ground free from land speculation, with the positive advantages of land controlled by the community, permanent provision for recreation and a wholesome outdoor life, opportunity for individual freedom and creative initiative, as well as

for sharing in the responsibility for and development of community facilities and activities.

Sec. 2. The rights of members of the Corporation to absolute freedom of religion, politics, association, expression, production and exchange shall never be abridged or impaired by the group, except in so far as the freedom of individual members conflicts with the rights of other members of the Corporation.

Sec. 3. The success of BRYN GWELED HOMESTEADS will depend upon the sustained interest of the members and their ability to maintain, develop, and further these purposes, thus providing an atmosphere where families of any race or creed or beliefs, with the above interests in common, may live fully.

## ARTICLE III

### *Membership*

Section 1. Charter members shall be those who sign the Articles of Incorporation. New members of the Corporation may be elected by an affirmative vote of not less than four-fifths of all the members of the Corporation, following a report of the Membership Committee, to which all applications for membership shall be referred for such investigation as the Committee shall consider necessary. Each applicant for membership shall deposit with the Corporation the sum of \$25, of which \$22.50 shall be returned to the applicant if the application is rejected or withdrawn. If the application is accepted, \$25.00 shall be applied toward the entrance fee of \$50, to be paid to the Corporation by every member upon execution of a Lease to him, her or them for a lot of ground within the community. At the next regular date for payment of land assessments the new member or members shall pay an installment of the land assessment appertaining to his, her or their lot, after adjustment has been made for the time elapsed between the commencement of the Corporation's fiscal year, and the date such application was accepted and Lease executed.

Sec. 2. Each member shall have one vote at the Meetings of the Corporation and shall be entitled to the use of all land in the community not under lease and all other facilities and property of the Corporation in common with other members, subject to the regulations which shall be made from time to time by the Board of Directors or by the Corporation. Members shall be responsible for the observance of all such rules and regulations by their families and guests so long as they may be upon

the land of the Corporation.

Sec. 3. (a) Membership in the Corporation shall depend upon the joint or individual ownership of leasehold interests in one or more lots, to be designated by the respective members on the official plan of the Corporation, and a member's rights shall in all cases be subject to the terms of his, her or their lease or leases therefor, provided that such terms shall not be inconsistent with these By-Laws. Members may sublet their leaseholds or a portion thereof (subject to the conditions of such leases and the regulations of the Board of Directors), to such persons as shall be approved by four-fifths of the members of the Corporation; provided that for periods of less than one year only the approval of the Board of Directors shall be required. Leases shall be assignable only to members of the Corporation after the approval of the Board of Directors has first been obtained.

Sec. 3. (b) Members shall be the owners of all buildings and improvements upon the ground leased to them, which buildings and improvements are designated and considered as severable and set apart from any leasehold interest of members in the land; members shall have the right to sell, convey, give, devise, encumber, or in any other way dispose of the same subject to these By-Laws, or as the same may be lawfully amended in the future, save and excepting the provisions of Article III,

Sec. 3. (c).

Sec. 3. (c) Notwithstanding any of the provisions of these By-Laws, members may borrow money, and as security therefor may, with the approval of the Board of Directors, without restriction, mortgage, assign, pledge or in any other way encumber their interests in the land or buildings and improvements erected thereupon in favor of creditors.

Further, these By-Laws shall not apply to or restrict in any way creditors from receiving full or partial satisfaction of members' obligations to them according to the tenor thereof, whether the same be by foreclosure execution or by voluntary conveyance or assignment of members' equities or redemption, or otherwise. Further, these By-Laws shall not restrict creditors in any way in their disposition of the aforesaid leaseholds or improvements erected thereupon.

Sec. 4. Non-members, whether or not they have any interest in the property of the Corporation, are not entitled to the use of the roads, facilities or any other privilege of the community except by permission, and under the supervision of the Board of Directors, and this permission may be refused or withdrawn at any time.

Sec. 5. Persons who have resigned or otherwise ceased to be members and the legal representatives of deceased members or any other non-members who may own any interest in such leases may assign their leasehold interests to members of the Corporation, but to no one else; and it is distinctly understood that they have no interest in the property of the Corporation other than the right to assign their leases and to sell to another member their equity in the capital investment of the Corporation at its face value, as determined under Article III, Section 8 of these By-Laws, unless any such person or persons shall be elected or re-elected to membership in the Corporation as provided in Section 1 of this Article.

Sec. 6. Upon the recommendation of the Membership Committee, (to whom all charges and complaints shall be referred for consideration and correction if that be possible) a member may be suspended or expelled by vote of not less than four-fifths of all the members of the Corporation for wilful violation of any rule or regulation of the Corporation or Board of Directors, or for other conduct which shall be deemed by the Membership Committee sufficiently detrimental to the Corporation, but no member shall be expelled without notice and a hearing before a committee of investigation composed of three members of the Corporation to be designated respectively by the Corporation, by the offending member and by the two so chosen. An expelled member shall forfeit all interest in the property of the Corporation, but shall have the same rights with regard to the lot or lots leased to him or her as are provided in Section 5 of this Article for other non-member holding leases, and shall be entitled to be reimbursed by any assignee of his or her lease for the value of the buildings and other improvements upon his or her lot, as the same shall be appraised by an appraisal board of three persons, one to be chosen by the Corporation, one by the expelled member, and a third by the two so chosen. If upon the expiration of three months from the date of expulsion the former member's lease shall not have been assigned, then the Corporation shall accept surrender of

the same and pay to the former member the said appraised value of the buildings and other improvements, less any amounts owing to the Corporation by such former member.

Sec. 7. No resignation shall be accepted from a member unless all land assessments and any other amounts due to the Corporation shall have been fully paid, nor until his or her lease shall have been either assigned to another member or surrendered to the Corporation. Except in cases of unimproved lots (where the member resigning shall be entitled to surrender his or her lease at the expiration of three months from the date his or her resignation was accepted) the Board of Directors shall decide in its judgment whether and when to accept surrender as aforesaid. If and when his or her lease is surrendered, the Corporation shall pay to the resigning member the value of the buildings and other improvements upon such lot, as appraised by an appraisal board, chosen as hereinbefore provided in Section 6 of this Article. Such value shall determine the maximum price to be paid therefor by the assignee of any such lease.

Sec. 8. The Corporation shall issue to its members Series C certificates which shall be a permanent method of carrying the capitalization of the Corporation. Series C certificates shall bear no interest and shall be redeemable at par at, and only at, cessation of membership. There shall be established a "per-point" amount of such certificates which shall be \$160 at April 15, 1959, and which may be changed from time to time by a two-thirds vote of all the members of the Corporation. Each member family shall be required to purchase Series C certificates in an aggregate amount equal to the per-point amount multiplied by the point value of its lot or lots as determined under Article IV, Section 3. The minimum rate of such purchase for each family shall be set by the Board of Directors which may take into account special circumstances. Until a member family has purchased its full established amount it shall pay interest on any deficiency at a rate to be set by the Membership.

Sec. 9. The interest of the members in the property of the Corporation shall not be equal, but shall be determined as follows: (a) each member family shall have a primary and preferential interest in the lot or lots leased to it by the Corporation to the extent of its holding of Series C certificates and (b) for each member family there shall be determined the number of points for which it has paid land assessment for each of the

previous twenty years; such numbers shall be totalled and such total shall be that family's proportional interest in ground not under lease and all other property of the Corporation. In this determination members who are lineal descendants (natural or adopted) of former members may treat as their payments land assessments paid by such former members (shared as they may decide if two or more members are descendants of any former member). If at the time of such determination any member family has not purchased the full amount of Series C certificates established for it, under Section 8, its share shall be reduced by the deficiency therein.

Sec. 10. Members of the Corporation shall not be personally liable for the debts, liabilities or obligations of the Corporation.

#### ARTICLE IV Taxes and Land Assessments

Section 1. All taxes assessed against the Corporation by any government or governmental agency in respect of leased plots and/or improvements thereon shall be payable by the leaseholder.

Sec. 2. Not later than eight (8) days before the annual meeting of the Corporation, the Board of Directors shall submit to the members a Budget for the following year, in which provision shall be made for:

(a) All taxes assessed by any government or governmental agency against the Corporation, and against the land, buildings, and improvements within the community excluding taxes specified in Section 1 above.

(b) The estimated cost of maintaining all roads and other improvements undertaken by the Corporation, as well as either (1) the original cost thereof; or (2) a payment into a reserve fund set up to distribute the cost of making such roads and improvements over a period of years; and

(c) All expenses for the management of the community during the year, and the accumulation of any contingency reserve considered necessary or desirable by the Board of Directors.

Sec. 3. A point value shall be set by the Board of Directors and approved by the members of the Corporation for each lot, without considering the value of any buildings or improvements thereon; the total Budget as computed under Section 2 (if

approved by the Corporation) shall be divided among the member families in proportion to the point value of their prospective lot or lots.

Sec. 4. The proportionate share of the total Budget thus calculated for each member of the Corporation shall be the amount of his or her land assessment for the ensuing year.

Sec. 5. Not later than June 1st each year copies of the Budget, apportionment and calculation of his or her annual dues or land assessments, in accordance with the foregoing Sections of this Article, shall be furnished by the Secretary to every member of the Corporation. Any member who is dissatisfied with his or her land assessment may at any time before July first notify the President or Treasurer of the Corporation of the reasons why the same is believed to be incorrect or unreasonable. If such member shall also designate a person to whom he or she is prepared to refer the matter for arbitration, the Board of Directors may nominate a second arbitrator whereupon the two so chosen shall select a third. The decision of a majority of the three arbitrators, or of the first arbitrator alone (if no more are chosen within ten days after his or her designation as aforesaid) shall be binding upon the complaining member, who shall continue to pay his or her monthly installment of the land assessment originally fixed, until a decision is reached, when a proper adjustment shall be made.

Sec. 6. Land assessments shall be payable in equal monthly installments, at such dates as the Board of Directors may determine. Any installment of land assessment remaining unpaid after the same is due shall bear interest at the rate of 6% per annum from such due date until paid, unless by vote of two-thirds of the members of the Corporation present at a regular meeting the payment of such interest may be waived. After any such installment of land assessment or any other payment due to the Corporation shall have been unpaid for more than sixty days, the delinquent member shall lose his right to vote at meetings of the Corporation and to hold office in the Corporation so long as such amounts remain unpaid.

#### ARTICLE V Directors

Section 1. The affairs and property of the Corporation shall be managed by a Board of seven Directors who shall be elected from the member-

ship of the Corporation at the annual meeting, and shall hold office for terms of three years, or until their successors are elected and qualify. The Directors shall be elected in three classes so that terms of two shall expire the first year, two the second year, and three the third year, provided that upon the expiration of the term of any Director, his or her successor shall be elected for a term of three years. Any vacancy occurring in the board of Directors may be filled by the Board until the members of the Corporation shall have elected a successor at either the annual or a special meeting of the Corporation called for the purpose of electing a successor for the unexpired term.

Sec. 2. The Board of Directors shall have full power and it shall be their duty to carry out the purposes of the Corporation as set forth in its Articles and these By-Laws. The Board shall authorize the granting of leases to the members of the Corporation, as well as all contracts, except such as the Board of Directors may from time to time by reason of the smallness of the amount involved authorize the Officers of the Corporation to execute.

Sec. 3. The Board may appoint a Project Manager to attend to such matters as the Board may from time to time delegate to him.

Sec. 4. The Board of Directors shall make a comprehensive written report at the annual meeting of the Corporation showing the result of operations for the preceding year and the financial condition of the Corporation and shall submit a Budget. Such other reports as the members of the Corporation may require from time to time shall likewise be submitted to the Corporation by the Board of Directors.

Sec. 5. The Board of Directors shall hold stated meetings at such times as it may determine, and special meetings when called by the President upon two days' notice. Special meetings shall also be called by the Secretary upon the written request of any two members of the Board upon five days' notice. Three members shall constitute a quorum of the Board.

Sec. 6. Any Director may be removed from office by vote of two-thirds of all the members of the Corporation at a special meeting of the Corporation called for that purpose.

## ARTICLE VI *Officers*

Section 1. The officers of the Corporation shall be a President Vice-President, Treasurer, Corresponding Secretary and Recording Secretary, who shall be elected by the Board of Directors to serve for one year, or until their successors are elected and qualify, subject to removal by a majority of the Board at any time. The President and Vice-President must be members of the Board of Directors; the Secretaries and Treasurer need not be members thereof. Any vacancies occurring in any of these offices shall be filled by the Board of Directors for the unexpired term.

Sec. 2. The President shall preside at the meetings of the Corporation and of the Board of Directors, and shall be ex-officio a member of all committees.

Sec. 3. In the absence or incapacity of the President, the Vice-President shall perform his duties.

Sec. 4. The Treasurer shall collect all dues and other money owing to the Corporation, and shall deposit all funds in the name of the Corporation in such institution as the Board may designate. He shall have custody of all deeds and other title papers of the Corporation. He shall keep the accounts of the Corporation and shall report thereon at such times as the Board of Directors or the Corporation may require. His accounts shall be audited annually and the Treasurer shall furnish such Bond as the Board of Directors may require. All checks, drafts, notes, and orders for the payment of money shall be signed by the Treasurer, and the President or such other person in addition to the Treasurer as the Board may designate.

Sec. 5. The Corresponding Secretary shall give notice of all meetings of the Corporation and of the Board of Directors, notify any new members of their election, and perform such other duties as may from time to time be required by the Board of Directors.

Sec. 6. The Recording Secretary shall keep the minutes of all meetings of the Corporation and of the Board of Directors, and shall have the custody of the Seal of the Corporation.

## ARTICLE VII *Standing Committees*

Section 1. Upon the adoption of these By-Laws, two members of the Corporation shall be

elected for one year, and three members for two years, to serve as a Membership Committee, whose successors shall be elected in alternate years for terms of two years each.

Sec. 2. The Nominating Committee shall consist of five (5) members, two (2) additional members of the Committee to be elected at the election prior to the Annual Meeting of 1952, one (1) for a one-year term and one (1) for a two-year term, and thereafter one (1) or two (2) members be elected each year for a period of three (3) years, according to the number of terms expiring.

Sec. 3. Additional standing committees may be set up by the Corporation.

Sec. 4. No member of the membership or nominating committees shall be re-elected until after the lapse of one year. Any member of a standing committee may be removed by a two-thirds vote of all the members of the Corporation.

## ARTICLE VIII *Meetings*

Section 1. The annual meeting of the Corporation shall be held at Bryn Gweled Homesteads on the third Wednesday in May, or on such other day in the third week of May as the members of the Corporation may appoint. Notice of the time of holding the annual meeting shall be given to all members of the Corporation not less than fifteen (15) days in advance. At the annual meeting the Corporation shall adopt a Budget for the ensuing year.

Sec. 2. Periodic business meetings of the members of the Corporation shall be held at regular intervals, as may be determined by the members from time to time. Special meetings of the Corporation may be called by the President or by the Board of Directors, and shall be called upon demand in writing of one-third of all the members of the Corporation. Notice of the time, place and purpose of a special meeting shall be given to all members of the Corporation not less than five (5) days in advance thereof (but such notice may be waived by affirmative vote of not less than a majority of all the members of the Corporation, provided that any action to be taken after such waiver shall be approved by not less than a majority of all the members of the Corporation). Business transacted at a special meeting shall be confined to matters stated in the call thereof, and the writ-



ten vote of absent members upon such questions shall be counted with those of members present at the meeting.

Sec. 3. A majority of all member families of the Corporation actually living on the Homesteads, represented in person, shall constitute a quorum of any meeting of the Corporation.

Sec. 4. The order of business at meetings of the Corporation shall be as follows: roll call, reading and approval of the Minutes of the preceding meeting, reports of the Board of Directors, Officers and Committees unfinished business, new business, elections and appointments.

Sec. 5. Except as may be otherwise specifically provided in these By-Laws, power of final decision upon all matters affecting the Corporation shall be in the members. Any action which could be taken at an annual or special meeting may be taken at a regular meeting of the Corporation without previous notice, if consideration of such action shall have been authorized or approved, and all requirements as to notice of such meeting shall have been waived in writing by every member of the Corporation.

#### ARTICLE IX *Seal*

The seal of the Corporation shall consist of a round disk with the words *BYRN GWELED HOMESTEADS* on its circumference and the date 1940.

#### ARTICLE X *Amendments*

These By-Laws may be amended, altered, or repealed by a vote of two-thirds of all the members of the Corporation at any meeting of which five (5) days' written notice setting forth the nature of the proposed amendment shall have been sent to all the members of the Corporation or by vote of two-thirds of all the members of the Corporation by written ballot after discussion of the proposed amendment at such a meeting, or at a meeting of which the necessity of notice shall be waived in writing by every member of the Corporation.

Caution: Do not use this document without consulting legal counsel. This document was drafted to conform to local law and conditions and might not be legally valid in your state and given your particular factual situation.

BYLAWS OF NEW COMMUNITIES, INC.

(Adopted at meeting of Board of Directors  
March 23, 1969 at Jackson Community  
Center, Albany, Georgia.)

ARTICLE IOrganization

Section 1. The name of this organization shall be New Communities, Inc.

Section 2. This organization is incorporated under the laws of the State of Georgia as a non-profit corporation, with its principal offices being in the City of Albany, Georgia. Other offices of this organization may be established from time to time within or without the State of Georgia, and the organization may qualify to do business without the State of Georgia, by resolution of the Board of Directors.

ARTICLE IIObjectives

Section 1. To aid and advance the improvement of agriculture and horticulture and industrial arts and the promotion of social welfare by acquiring, by purchase, lease, gift or otherwise, and the disposing of (when no longer necessary or desirable) interests in real or personal property within and without the State of Georgia with a view to the creation of new communities for poor, distressed, underprivileged, disadvantaged or dispossessed persons, who will be permitted to lease such property from this organization or otherwise occupy the same and to live, work and learn in such communities, thereby contributing to their own educational, social and economic advancement and that of the larger communities in which such persons shall reside.

Section 2. Nothing contained in the Certificate of Incorporation of this organ-

ization or in these By-Laws shall authorize or permit the corporation, and the corporation shall not, directly or indirectly, carry on propaganda or otherwise attempt to influence legislation, or to participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any political party or any candidate for public office. This section of these by-laws may not be amended, altered or repealed except upon written notice to the appropriate office of the U. S. Internal Revenue Service and comparable state agencies in the State of Georgia and any other state in which the corporation is or may be qualified to do business.

Section 3. To the end that the economic potential of the real property acquired or to be acquired by this organization may be developed to the fullest extent, the basic principle of this organization with respect to real property shall be to hold such property in trust and to permit occupancy pursuant to long-term lease. Such lease may be made to individuals, to communities, or to entities created by such communities to further their joint economic progress. However, the sale, exchange or other disposition of real property or interests therein by the organization to similar groups or individuals, as described above, shall not be precluded, provided that in each such instance the Board of Directors shall approve of such sale, exchange or other disposition by a three-quarters vote.

ARTICLE IIIPlanning for Development Improvement and Use of Land Acquired:

Section 1. Plans for Development and Improvement:

Plans for development and improvement of acquired land required in preparation for its occupancy shall be made

by the Land Improvement and Development committee for each tract or parcel of land acquired. Said committee being empowered to consult with such technical experts as the committee shall deem necessary or appropriate; said experts to be located and obtained by the Technical Resources Committee and said plans to be approved by the Board of Directors.

Section 2. Plans for Usership:

a. The Technical Resources Committee shall upon the acquisition of land and identification of prospective occupancy, and subject to the approval of the Board of Directors, obtain necessary and appropriate technical experts to go over the parcel of land acquired in order to make a feasibility study for the use of said tract or parcel of land.

b. This and other relevant information and expertise acquired shall be made available to the prospective occupants of the tract or parcel of land identified at the time through workshops, training programs, etc., prior to and during the initial stages of the settlement of said parcel of land; and during the planning and decision-making process as to the use of the land in question. Said workshops and training programs, etc., to be held upon request of the local group directly or through the local group's representative(s) to the Board or upon the initiative of the Board itself.

c. Within a specified time to be designated by a resolution of the Board of Directors, after the acquisition of a tract or parcel of land and the identification or organization of prospective occupants of said land, a plan shall be submitted to the Board of Directors for the consideration and approval of the Board.

d. In the event that the Board does not approve the plan submitted, it shall give notice of its failure to so approve and a statement of reason(s) therefor. The local group of prospective occupants shall

then be required to reconsider its plan for the use of the tract or parcel of land in question.

e. In the event that after reconsideration the local group reaffirms the plan as first submitted by vote registered in accordance with the by-laws of the local group its decision shall be controlling.

#### ARTICLE IV

##### Membership

Section 1. Incorporators and initial officers of the corporation, members of standing committees at the time of incorporation, and all advisory committees or boards established to aid in the creation of the corporation shall be considered charter members of the organization and shall be eligible for continued membership.

Section 2. Persons in the following categories shall be eligible for membership in this organization, and a nominal yearly dues to defray administrative costs shall be set by the annual meeting of the membership, but shall not exceed \$20.00;

- a. Lessees or occupants of real property of the corporation;
- b. Members of local sponsoring organizations (See Article VIII);
- c. Members of regional cooperatives or community organizations which are eligible to act as local sponsoring organizations; and
- d. Members of non-profit organizations working in community development in rural areas.

Section 3. Any eligible person who wishes to join the association shall submit a written request to the membership committee of the corporation in such form as may be prescribed by such committee. Prospective members shall be recommended by the membership committee to the Board of Directors to be acted upon

by the Board of Directors at its next meeting. The membership committee may accept such persons for membership provisionally and the recommendation of the membership committee shall be subject to approval by two-thirds of the members present at the annual meeting.

Section 4. Associate membership shall be available to any person contributing \$100.00 or more to the corporation as a yearly fee. Associate members shall not be eligible to vote, but may attend all meetings of the membership.

Section 5. Members in good standing shall meet in January or February in each year to elect a Board of Directors, discuss policy, and make recommendations to the Board of Directors. The date, time and place of the meeting shall be determined by resolution of the Board of Directors, and notice of such date, time and place shall be mailed by the Secretary to every member and associate member in good standing at his address as it appears in the membership roll book of this organization at least thirty (30) days prior to the annual meeting.

#### ARTICLE V

##### Directors

Section 1. The affairs of the organization shall be managed by a Board of Directors consisting of not less than nine nor more than twenty-four directors. During the first two years of operations from date of final incorporation, the Board of Directors shall consist of the original incorporators of the corporation. They may increase the number of directors to not more than twenty-four during such initial period, and may designate the directors to serve the remainder of any unexpired term created by such action.

Section 2. Directors elected after the first two years shall serve for a term of

three years, provided, that at the end of the first two-year period from date of incorporation one-third of the directors elected to the next Board of Directors shall be elected for a term of one year, one-third shall be elected for a term of two years, and one-third shall be elected for a term of three years. Persons elected to the first Board of Directors elected at the end of the first two-year period from date of incorporation shall draw lots at the time of their election to determine which of them shall serve for one-year, two-year, or three-year terms. Thereafter, as the term of each individual director expires, he shall be re-elected, or a successor shall be elected, for a full three-year term.

Section 3. At least thirty (30) days prior to the date set for the first election of directors at the end of the initial two-year period from date of incorporation, the Board of Directors will appoint a nominating committee from among the directors or the members of the corporation to nominate a slate of thirty persons for election to the Board of Directors. At least one-half of the slate selected must come from regional areas where land re-settlement programs are established or being considered. Membership in the organization and commitment to its purposes shall be prerequisite to election to the Board of Directors.

#### ARTICLE VI

##### Responsibilities of the Board of Directors

Section 1. In conducting the business of the corporation, the Board of Directors shall, subject to the Certificate of Incorporation and these By-Laws:

- a. Appoint standing committees;
- b. Establish policy guidelines for distribution and use of corporate lands;
- c. Determine the terms, covenants and conditions of the Standard Forms of

Lease to be utilized by the corporation, based on recommendations of standing committees and local sponsoring organizations;

d. Issue notes, bonds, debentures or other evidences of indebtedness as required in order to carry out the purposes of the corporation and as may be permitted by law;

e. Negotiate mortgages on corporate real and personal property;

f. Determine regional sponsoring organizations to select, develop and train cooperative organizations of families to settle land provided by the corporation;

g. Enter into leases, licenses or other agreements for the use or occupancy of corporate real or personal property;

h. Purchase, sell, lease, exchange or otherwise acquire and dispose of, real or personal property or any interest therein;

i. Raise funds by loan, gift or otherwise for corporate purposes;

j. Employ and compensate necessary personnel to carry out the above functions; and

k. Exercise all other powers necessary and proper to the exercise of the foregoing functions.

## ARTICLE VII

### Standing Committees & Advisory Board

Section 1. The Chairman of the Board of Directors shall appoint, at the first meeting of the Board, with majority approval, a Chairman for the following standing committees. Each committee chairman shall then appoint members of the organization and/or volunteer technical experts to serve with him on the said committee:

- a. Structure and By-Laws Committee;
- b. Legal Committee;
- c. Fund Raising and Public Relations Committee;
- d. Land Acquisitions Committee;
- e. Technical Resources Committee;
- f. Liaison Committee (between Board of Directors and local sponsoring organizations and land settlement groups);
- g. Committee on Rent and Collection;
- h. Committee on Membership;
- i. Land Development and Planning Committee;
- j. Economic and Social Planning Committee;
- k. Investment Committee; and
- l. Technical Assistance Committee (housing, farming, etc.).

Section 2. The Board of Directors shall also establish a technical advisory board to provide skills needed.

## ARTICLE VIII

### Local Sponsoring Organizations

Section 1. A qualified sponsoring organization shall be selected by the Board of Directors in accordance with the following criteria:

- a. Democratic structure involving local persons such as an existing cooperative or community organization in a rural area;
- b. Broad base of organization, preferably regional, covering several counties;
- c. Involvement in community activities and related economic developments; and
- d. Other criteria established by the Board of Directors.

Section 2. The responsibilities of local sponsoring organizations shall include the following:

- a. Provision of initial guidance for the development of rural new towns in

their geographic areas, including selection of initial management; 86

b. Sharing of responsibility for selection of initial settlers and establishment of initial democratic structure; and

c. Assistance to the corporation in locating land and raising funds to buy land.

## ARTICLE IX

### Voting

At all membership meetings, except for the election of officers and directors, all votes shall be viva voce, except that for election of officers ballots shall be provided and there shall not appear at any place on such ballot any mark or marking that might tend to indicate the person who cast such ballot.

At any regular or special meeting if a majority so requires any question may be voted upon in the manner and style provided for election of officers and directors.

At all votes by ballot the chairman of such meeting shall immediately prior to the commencement of balloting appoint a committee of three who shall act as "Inspectors of Election" and who shall at the conclusion of such balloting certify in writing to the chairman the results and the certified copy shall be physically affixed in the minute book to the minutes of that meeting.

No inspector of election shall be a candidate for office or shall be personally interested in the question voted upon.

## ARTICLE X

### Order of Business

1. Roll Call
2. Reading of the minutes of the preceding meeting
3. Reports of Committees

4. Reports of Officers
5. Old and Unfinished Business
6. New Business, including Election of directors or officers where necessary or appropriate
7. Good and Welfare
8. Adjournment

## ARTICLE XI

### Procedure of Board of Directors

Section 1. A majority of the members of the Board of Directors shall constitute a quorum and the meetings of the Board of Directors shall be held regularly on \_\_\_\_\_. Meetings may be held within or without the State of Georgia. Absence of one or more of the directors subsequent to the call of the roll shall not result in the loss of a quorum. A majority of those present and voting shall be sufficient to carry any question. A lesser number than a quorum may adjourn a meeting of the Directors for a period of not more than two weeks from the date scheduled by these by-laws and the Secretary shall cause a notice of such adjourned meeting to be sent to all those Directors who were not present at the meeting originally called. A quorum as hereinbefore defined shall be required at any adjourned meeting.

Each director shall have one vote. A proxy vote is permitted to a Board member for a legitimate absence, with only two proxies permitted per year. Four quarterly meetings of the Board are required, with one meeting during each quarter of the calendar year, with the first meeting coming just prior to the annual membership meeting. Board meetings are to take place on the first Saturday of the month and the other three quarterly meetings to take place at subsequent three-month intervals. Special Board meetings can be called as neces-

sary by the President or by petition of twenty-five per cent of the members of the Board.

The Board of Directors may make such rules and regulations covering its meetings as it may in its discretion determine necessary.

Section 2. Vacancies in the said Board of Directors shall be filled by a vote of the majority of the remaining members of the Board of Directors for the balance of the year.

Section 3. The president of the organization by virtue of his office shall be chairman of the Board of Directors. The Board of Directors shall select from one of their number a secretary.

Section 4. A director may be removed after hearing upon not less than ten (10) days' notice to all Directors when sufficient cause exists for such removal. The Board of Directors may entertain charges against any director. The nature and proponent of such charges shall be set forth in the notice of hearing. A director may be represented by counsel upon any removal hearing. The Board of Directors shall adopt such evidentiary and procedural rules as it may in its discretion consider necessary for the best interests of the organization, for this hearing. Cause for removal shall include, but shall not be limited to, consistent and willful failure to attend meetings of the Board of Directors. Unexcused absence from three consecutive meetings of the Board of Directors shall constitute such consistent and willful failure to attend.

## ARTICLE XII

(This article describes the officers—President, Vice President, Secretary, and Treasurer—and outlines their duties, it is omitted from this appendix since it includes nothing unique to the community land trust.)

## ARTICLE XIII

### Amendments

Except as provided in Article II Section 2, these By-Laws may be altered, amended, repealed or added to by an affirmative vote of not less than two-thirds of the members at an annual meeting. No alteration, amendment, repeal of or addition to these By-Laws shall be adopted unless previously summarized in the notice of the annual meeting at which the proposal is to be considered.

## ARTICLE XIV

### Rules of Order

Except as provided herein, Roberts Rules of Order (revised) shall apply to meetings of this organization.

Caution: Do not use this document without consulting legal counsel. This document was drafted to conform to local law and conditions and might not be legally valid in your state and given your particular factual situation.

# Indenture for the Possession of Land

Independence Foundation, Inc.  
Suffern, N. Y. 1M-4-39

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Indenture made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, between \_\_\_\_\_, an unincorporated association affiliated with and chartered by the Independence Foundation, Inc., whose post office address is \_\_\_\_\_ (hereinafter referred to as the "Association") and \_\_\_\_\_, whose post office address is \_\_\_\_\_ (hereinafter jointly and severally referred to as the "Homesteader").

WHEREAS, the Association is engaged in the establishment, maintenance, and development of the homestead community known as the \_\_\_\_\_ located

(hereinafter referred to as the "Community"), for the mutual benefit of its members, and has transferred and proposes to transfer, by instruments generally similar to this Indenture, the possession and occupancy of plots of land in this Community to its members; and

WHEREAS, the Homesteader is a member of the Association and desires the possession and occupancy of the plot of land hereinafter described for a homestead in the Community;

NOW, THEREFORE, the parties hereto, for themselves and their respective heirs, executors, administrators, successors, and assigns, do hereby mutually covenant and agree as follows:

1. The Association hereby transfers and assigns to the Homesteader and the Homesteader accepts from the Association, upon the terms and conditions herein set forth, the possession, occupancy and use of all those certain premises, situate, lying, and being in the \_\_\_\_\_ of \_\_\_\_\_, County of \_\_\_\_\_, and State of \_\_\_\_\_, bounded and described as follows:

containing \_\_\_\_\_ acres more or less, the Land being designated as Plot No. \_\_\_\_\_ on the official map of the Community, a copy of which is attached hereto, and designated exhibit "A", subject, however, to all easements, rights-of-way, restrictions, exceptions, reservations, liens and defects which appear in the Association's chain of title, and excepting and reserving unto the Association all the oil, gas, coal, and other mineral rights of whatever nature upon, in, or under said property, together with the usual mining rights, powers and privileges, including the right of access to and use of such parts of the surface of the property as may be necessary for mining and saving said minerals, except that the Homesteader shall have the right to the minerals on said property, but only in an amount reasonably necessary for his own use and not for the purpose of selling the same.

#### TERM

2. The term of this Indenture shall be the period of 999 years beginning with the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, and ending on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

#### LAND ASSESSMENT

3. In return for such possession, occupancy and use of the Land described in paragraph 1 above, the Homesteader shall pay to the Association for the balance of the current year 19\_\_\_\_, a sum of \$ \_\_\_\_\_ in equal monthly installments of \$ \_\_\_\_\_, and for the remainder of the Term of this Indenture or any renewal thereof, an annual consideration or Land Assessment, payable in equal monthly installments, without deduction for any set-off or claim against the Association, computed and fixed as described in paragraphs 5 to 13 hereinafter.

#### LAND

4. Wherever in this Indenture the term "Land" is used with reference to the particular plot of land possessed, occupied or used by the Homesteader by virtue of this Indenture, it shall refer to the plot of land described in paragraph 1 above.

#### DETERMINATION OF LAND ASSESSMENT

5. Wherever in this Indenture the term "Land Assessment" is used, it shall refer to payments to be made by the Homesteader to the Association in consideration of the possession, occupancy and use of the plot of land referred to in paragraph 1 above, the amounts of which shall be determined in the following manner:

6. *Budget:* On or before the first day of November of each calendar year, the Board of Trustees of the Association shall make an estimate of the amount of money needed to meet the

following obligations of the Association and expenditures of the Community for the ensuing year;

7. *Taxes:* All taxes upon and assessments against the property within the Community, assessed or levied by any government or governmental agency and payable by the Association. The term "property", for the purposes of this paragraph, shall include all realty and personalty, including all buildings and other improvements whether or not severable by the Homesteader and whether or not paid for in full by him, to the extent that any of such property shall have been included in the measure of such tax or assessment;

8. *Interest on Capital Investment:* Interest on the unamortized balance of the capital investment of the Association in the Community. The term "capital investment" for the purposes of this paragraph, refers to (a) the purchase price of the land, (b) money spent for roads, public utilities and other permanent improvements, (c) legal, engineering, accounting and other developmental expenses, and (d) deficits incurred by the payment of the obligations and expenditures enumerated in paragraphs 7, 8, 9, 10, and 11 of this Indenture in excess of actual income from all Land Assessments;

9. *Land Amortization Fund:* Payments into the Land Amortization Fund of the Independence Foundation, Inc., of one-half of one per cent of the unamortized balance of the capital investment referred to in sub-paragraph 8 above. These payments into the Land Amortization Fund are to continue only as long as (a) the payments are invested by the Foundation in Independence Certificates, (which are the certificates of indebtedness issued by the Foundation for the moneys subscribed to its Revolving Fund), and (b) the interest received by the Land Amortization Fund upon such Certificates is used by the Foundation to amortize the unamortized capital investments of all the associations making payments into the Fund, in proportion to the cumulative payments of each such association into the Land Amortization Fund, and (c) the Association operates under the auspices of or by virtue of a charter from the Foundation.

10. *Roads and Community Improvements:* Payments for building and maintaining roads and making other Community improvements, or payments into a reserve fund created to distribute the cost of building such roads and improvements over a period of years; and

11. *General Expenses:* All expenses for the management of the Community and the accumulation of any reserve deemed necessary for contingencies; Provided, however, that prior to the completion of the amortization of the capital investment provided for by paragraph 9 above, the total estimates for the items described in paragraphs 10 and 11 shall not exceed twenty five (25) per cent of the total estimates for the items described in paragraphs 7 and 8, and after such amortization the total estimates for the items described in paragraphs 10 and 11 shall not exceed fifty (50) per cent of the total estimates for the item described in paragraph 7, without the consent of two-thirds of all Indenture holders of plots of land within the Community. A copy of the estimate of

the amount of money needed for the payment of the obligations and expenditures enumerated in paragraphs 7 to 11 above for the current calendar year shall be attached hereto and designated exhibit "B".

12. *Apportionment of Budget:* The obligations and expenditures thus budgeted shall be apportioned proportionately to each Indenture holder according to the full appraised value of his respective plot of land, exclusive of all Buildings and Improvements thereon; Provided, however, that if any of the Indenture holders shall erect or cause to be erected upon their respective plots of land, buildings or improvements with an aggregate value greater by one hundred (100) per cent than the average value of the buildings and improvements erected or made by all the Indenture holders in the Community, any excess value over one hundred (100) per cent shall be included in the value of the land of such Indenture holders for the purpose of apportioning said expense; Provided further, that if land occupied by any educational, religious, or other organization should be tax exempt for any purpose, the estimated tax expenditure of the Association from which such organization is exempt shall be apportioned only among those Indenture holders whose land is subject to taxation; and provided, further, that if the apportionment for any Indenture holder should be less than the annual economic rent of the land, such apportionment shall be increased to the value of the annual economic rent. The term "annual economic rent," for the purposes of this paragraph, is defined as the respective market value of the possession and occupancy of the various plots of land in the Community for a period of one year; for the purposes of determining the Land Assessments, this market value shall be determined by impartial appraisals made by the Association.

13. The part of the total estimated obligations and expenses thus apportioned to each Indenture holder shall be his annual Land Assessment for the ensuing year, payable in equal monthly installments.

14. On or before the fifteenth day of November of each calendar year, the Association shall furnish the Homesteader a copy of (a) the budget for the ensuing year referred to in paragraph 6 above; (b) the apportionment referred to in paragraph 12 above, and (c) the amount of the Land Assessment to be paid by the Homesteader as provided for in paragraph 13 above. A copy of the apportionment referred to in paragraph 12 above for the current year, shall be attached hereto and designated exhibit "C", and a copy of the amount of the Land Assessment referred to in paragraph 13 above, for the current year, shall be attached hereto and designated exhibit "D."

15. In the event the Homesteader is dissatisfied with the amount of any Land Assessment hereafter computed and fixed and believes that it is incorrect or unreasonable, he may, at any time before December 1st of the year prior to the year to which the Land Assessment applies, notify the Association in writing of his desire to submit the Land Assessment to a board of arbitration as provided for in paragraphs 17 to 21 below for a determination of correctness or reasonableness. During any such submission to

Arbitration, the monthly installments of the Land Assessment shall be paid by the Homesteader upon the basis of the Association's apportionment until the board of arbitration has made its award, and any excess paid above that determined as correct and reasonable by the board of arbitration shall thereupon be returned to the Homesteader.

16. If any installment of the Land Assessment is not paid by the Homesteader on the date when it is due, the Homesteader shall pay to the Association as liquidated damages caused by the delay a sum calculated at the rate of one cent per one dollar for each thirty days or less of each such delayed installment until paid, unless payment for such damages is waived at the option of the Association. All charges for such damages shall be deemed additions to the Land Assessments, but this provision shall not be construed to extend the time of the Homesteader for payment of Land Assessments. For the non-payment of such additional Land Assessments, the Association shall have the same remedies and rights that the Association has for the non-payment of the Land Assessments.

#### ARBITRATION

17. Wherever the term "Arbitration" is referred to in this Indenture, it shall refer to the fact that the parties hereto may proceed in the following manner for the adjudication by a board of arbitrators of any differences between them not explicitly provided for in this agreement.

18. Either party may, by written notice to the other, appoint one arbitrator.

19. Within ten days after such notice the other party shall, by written notice to the former, appoint a second arbitrator, and in default of such second appointment the arbitrator first appointed shall be the sole arbitrator.

20. When any two arbitrators have been appointed they shall, if possible, agree upon a third arbitrator and shall appoint him by notice in writing signed by both of them in triplicate, one of which shall be given to each party hereto. If ten days elapse after the appointment of the second arbitrator without notice of the appointment of a third arbitrator then either party hereto or both may apply for the appointment of a third arbitrator in accordance with the provisions of the statutes of this State applicable to arbitration.

21. Upon the appointment of the third arbitrator the three arbitrators shall meet and shall give each party hereto an opportunity to present his case and witnesses, if any, in the presence of the other and shall then make their award. The award of a majority of the arbitrators shall be binding upon the parties hereto, and judgment may be entered thereon in any court having jurisdiction. Such award shall include the fees and expenses of arbitration, and assessment of the same against either or both parties.

#### RESTRICTIONS

22. During the term of this Indenture the Homesteader shall use or permit the use of the Land and the Improvements



thereon only for homesteading purposes, it being understood that homesteading within the meaning of this Indenture is a way of living in which property is used (a) primarily for the residence of a family group, (b) for farming, and (c) for productive and creative work in the home, studio, workshop, or on the Land, primarily by individuals comprising a family group. In particular, the Homesteader shall not, without the consent of the Association, use the property for mercantile, commercial, manufacturing, or industrial purposes.

23. The Homesteader shall not, without the consent of the Association in writing, construct, alter, demolish, or change the location of any dwelling, outbuilding, fence, well, sewage system, tank, or other structure or improvement of any kind which substantially affects the value or appearance of the property, unless he entirely removes them from the land in accordance with the provisions of paragraph 39 below.

24. The Homesteader shall not make or permit any unlawful use of the property, and shall not commit waste, nor maintain a garbage or refuse dump, or other nuisance thereon.

25. The Homesteader shall not sub-let or permit the occupancy by others of the Land or the Improvements thereon for a period longer than ten months without the express consent in writing of the Association.

26. The Homesteader agrees to secure in writing consent from the Association for any use of the Land and the Improvements thereon for purposes other than those described above or to which the Restrictions herein described may apply before entering upon any such use of the Land and the Improvements thereon, it being understood that the Homesteader may elect to determine for himself whether the proposed use requires such consent. Should the Association or any holder of an Indenture for the possession of land in the Community, differ with his conclusion and notify him in writing of the necessity of securing such consent, he shall forthwith cease and desist from such use until consent has been secured, and return the property to its original condition if consent should not be granted by the Association.

27. In the event that any request for consent to a particular use or for exemption from any Restriction herein agreed to by the Homesteader is refused by the Association, (it being understood and agreed that the Association must either grant or refuse its consent within thirty days after receipt of such request), the Homesteader may appeal from such refusal to arbitration.

28. The Homesteader hereby agrees to and acknowledges the fact that the Association has consented to the use of land in the Community for the purposes of a School of Living and Community Center, and agrees that any further consent by the Association to the use of land for this or for similar public purposes which it considers will increase the beauty, healthfulness, or social value of the Community, does and would not constitute violations of any of the Restrictions herein contained.

29. The Homesteader shall at all times maintain the Land and Improvements in a clean and healthful condition, keep the

buildings and structures painted and in repair, keep the Land free from all noxious weeds or brush, prevent and control erosion of the soil, and spray, fumigate, or otherwise treat all trees, shrubs, or other plants on the Land in order to prevent the growth or spread of agricultural pests. If the Homesteader fails to so maintain the Land and Improvements, the Association may enter upon the Land and Improvements and do so for his account, in which event the cost of such maintenance shall constitute an additional Land Assessment, payable forthwith on demand and bearing interest at the rate of six (6) per cent per annum from the date such Land Assessments are incurred until repaid.

#### BUILDING OR IMPROVEMENTS

30. Wherever in this Indenture either or both of the terms "Buildings or Improvements" are used, they shall refer to any and all manner of additions or changes made on or in the Land including residences, barns, out-buildings, wells, cisterns, sewage and drainage systems, paths and roads, fences, trees, plants, and topsoil, any or all of which may have been developed or constructed on or in, or added to the Land and which are immediately or ultimately the effect of, and caused by, labor exerted or materials placed upon or in the Land by or for the Homesteader.

#### MISCELLANEOUS PROVISIONS

31. During the term of this Indenture the Homesteader shall be entitled to use any other property which the Association may from time to time designate and set aside for Community uses, subject to such rules and regulations as the Association may prescribe.

32. The Association agrees that all other plots of land shown upon the official map of the Community shall be disposed of only by Indentures containing substantially the same provisions as are embodied in this Indenture, or if substantial modification in such provisions are made, the Homesteader shall be given the benefit of such modifications; except that those plots of land which are shown on the official map as business sites will be disposed of by Indentures permitting their use for mercantile, commercial and other purposes.

33. It is expressly understood and agreed that this Indenture is appurtenant to membership in the Association by the Homesteader and that the termination of such membership for any reason whatsoever shall terminate any and all of the Homesteader's rights in and under this Indenture except as herein otherwise expressly provided.

34. The failure of the Association in any one or more instances to insist upon the strict performance of any of the covenants of this Indenture, or to exercise any option herein conferred, shall not be construed as a waiver or relinquishment for the future of any such covenants, conditions, or options, but the same shall continue and remain in full force and effect.

35. This Indenture may be recorded by either of the parties hereto.

36. In the event of any disagreement between the Homesteader and the Association concerning any matter not explicitly provided for in this Indenture, the matter shall be submitted to arbitration.

37. Wherever in this Indenture the term "Notice" is used or any requirement is made that either of the parties hereto shall be advised by the other, such requirement shall be construed as having been satisfied if such notice or advice in written form is delivered in person or is mailed to the last known address of the party to be notified.

#### TRANSFER AND ENCUMBRANCE

38. The Homesteader shall not, without the prior consent in writing of the Association, transfer, sell, assign, or encumber in any manner any of his rights or interests under this Indenture, or his title to the Buildings and other Improvements on the Land except to the Foundation to secure the repayment of money loaned to the Homesteader. If the Homesteader should desire to encumber, transfer, assign, sell or otherwise dispose of the above described property or any of his interest therein to any other person, he shall first submit to the Association an application for its consent. This application shall be upon a form prescribed by the Association and shall contain, among other things, an offer to sell to the Association all the Buildings and Improvements upon the Land at a price equal to the current appraised value as determined by arbitration, (the term "current appraised value" for the purposes of this Indenture being defined as the cost of reproducing the Buildings and Improvements at the average of prices prevailing for three years prior thereto, less depreciation if any since the time the Buildings or Improvements were originally made or erected), and to cancel this Indenture and relinquish all rights under it. Within thirty days after the application has been submitted, the Association shall either accept or reject the above described offer. If the offer is rejected by the Association, the Association shall grant the consent requested, provided

(a) the annual Land Assessments for the current year shall have been paid, (b) there have been paid all sums for any obligations into which the Homesteader has entered or may enter and to guarantee the payment of which he has in any manner pledged any of the Buildings or Improvements on the Land or created any lien upon them, or the holder of any such obligations has consented to the request of the Homesteader, (c) the transfer papers or other appropriate documents are approved by the Association, (d) the Homesteader has received, or will receive, directly or indirectly, for the transfer both of his rights and interests under this Indenture and his rights and interests in the Buildings and Improvements on the Land, no consideration of any kind of an aggregate value in excess of the current appraised value as determined by arbitration of the Buildings and Improvements alone, (e) the application is not disapproved by more than one-fifth of the Board of Trustees or more than one-third of all holders of Indentures for plots of land in the Community by vote in person or by mail at a meeting of the members of the Association held solely or in part for the purpose

of considering the application, and (f) the transferee agrees to become a member of the Association; otherwise the application may be disapproved by the Association. Any attempt to transfer in any manner the Indenture and the Buildings and Improvements without complying with the provisions of this paragraph shall constitute a breach of this Indenture and shall entitle the Association, in its discretion, to terminate this Indenture.

39. All Buildings and Improvements on the Land shall, as between the Homesteader and the Association, be regarded as severable from the Land for the purpose of demolition or removal, but the Homesteader shall not remove or demolish any of them without the prior consent in writing of the Association. If the Homesteader should desire to remove or demolish any of the Buildings or Improvements, which substantially affects the value or appearance of the property, he shall proceed to obtain such consent from the Association in the same manner as provided for in the case of transfer, sales, assignments or encumbrances in paragraph 38 above. Any attempt to remove or demolish any of the Buildings and Improvements without complying with the provisions of paragraph 38 above shall constitute a breach of this Indenture and shall entitle the Association, in its discretion, immediately to terminate this Indenture.

40. The Association shall have the right, but shall be under no duty, to prosecute or defend in its own or the Homesteader's name any actions or proceedings appropriate or necessary for the protection of the title to or possession of, or any other interest, in the Land and the Buildings or Improvements.

41. This Indenture shall be subject to and subordinate to the lien of any mortgage, deed of trust, or other security instrument hereafter executed or created either by the Association or by the Independence Foundation, Inc., (pursuant to the contract for sale of the entire tract, of which the Land hereby Indentured is a portion, to the Association), in order to secure the repayment of money borrowed either by the Association or the Foundation to finance the construction by the Homesteader of Improvements upon the Land or to finance the liquidation of the Homesteader's interests in such improvements by lending him a portion of their value. Provided, however, such security instrument shall not be given to secure a sum of money in excess of the sum actually loaned to the Homesteader. The borrower must agree to provide for the retirement of any such mortgage indebtedness as rapidly as payments are made by the Homesteader. The Homesteader agrees to execute, at the borrower's expense, any instrument which the Association, the Foundation, or any lender may deem necessary or desirable to effect the subordination of this Indenture to any such security instrument for the purpose above stated, and the Homesteader hereby appoints the Association its attorney-in-fact, irrevocable during the term hereof, to execute any such subordination instrument. This Indenture shall also be subject to the right of the Foundation to sell its equity in the property in accordance with the provisions of the contract of sale with the Association, referred to above.

### CONTINUANCE OF INDENTURE

42. The continuance of this Indenture or any renewal thereof is expressly conditioned as follows: Upon the happening of any or all of the events mentioned in paragraphs 45 to 49, the Association may at its option give the Homesteader at least thirty days written notice of the Association's election to terminate the Indenture, and upon the date specified in such notice the term of this Indenture, or any renewal thereof shall terminate and come to an end, and all right of possession and occupation hereunder on the part of the Homesteader shall cease, with the same force and effect as though that were the date originally set in this Indenture for the termination thereof, and the Homesteader shall quietly and peaceably remove from the Land and surrender possession and occupancy thereof, unless before the expiration of such period the condition which was the basis for such notice shall have ceased to exist, in which event the Homesteader shall be fully reinstated in all his rights under this Indenture and the notice of termination shall be of no further effect.

43. In the event of such termination, the Association may immediately or at any time thereafter reenter the Land and remove all persons and property therefrom, either by summary dispossession proceedings or by any suitable action or proceeding at law, or by force or otherwise, without being liable to prosecution or damage therefor. The Homesteader hereby expressly waives any and all rights of redemption and any and all other rights afforded by law in case he shall be dispossessed by judgment or warrant of any court or judge, and the Homesteader also waives and will waive all rights to trial by jury in any summary or other proceeding thereafter instituted by the Association against the Homesteader in respect to the Land and the Improvements. The terms "reenter" and "reentry" as used in this Indenture, are not restricted to any technical meaning. In the event of a breach or threatened breach by the Homesteader of any of the covenants or provisions hereof, the Association shall have the right of injunction and right to invoke any remedy allowed at law or in equity, as if reentry, summary proceedings and other remedies were not herein provided for.

44. The events referred to in paragraph 42 are the following:

45. The Homesteader ceases to be a member of the Association, or this Indenture shall pass by operation of law or otherwise, or be assigned, to anyone who is not then a member of the Association, except that, if upon the death of the Homesteader, his rights in and under this Indenture, pass by will or intestate distribution to any person or persons, such legatees or distributees may with the consent of the Association by assuming the terms of this Indenture in writing within fifteen months after the Homesteader's death, become the Homesteader hereunder, without, however, releasing the estate of the deceased Homesteader from a liability under this Indenture, provided, however, that such estate shall not be liable for any liability accruing after three years from such date of death. In any event, this condition shall be suspended for a period of fifteen months from such date of death;

46. The Homesteader shall default for a period of ninety days, (a) in the payment of the Land Assessment or of any other proper charges against him under this Indenture; (b) in the payment of any lawful obligation contracted with any person, partnership, guild, association, or corporation for the construction of Improvements upon the Land; (c) in the payment of any obligation represented by a lien or encumbrance upon either or both the Land and Improvements thereon;

47. The Homesteader shall be in default for thirty days after written notice thereof, in the performance of any covenant, condition, or agreement of any loan or other contract such as is referred to in paragraph 46 above.

48. The Homesteader, either before or after the commencement of the term hereof, shall be in default in the performance of any other covenant, condition, or agreement hereof, for sixty days after written notice of such default shall have been given to the Homesteader by the Association;

49. The Homesteader shall become or is adjudicated insolvent or a bankrupt, or make a general assignment for the benefit of creditors, or take the benefit of any insolvency or bankruptcy act, or a receiver, trustee, or assignee is appointed for the Homesteader's property, or an execution or attachment issued against the Homesteader's rights under this Indenture shall be levied upon, advertised for sale, or sold by operation of law or otherwise, or said property or rights are sold pursuant to the term of an agreement whereby said property or rights shall have been pledged as collateral security.

50. Upon the expiration or termination of this Indenture for any cause, the Homesteader shall be entitled, as hereinafter provided, to the value of his interest in any Buildings or Improvements upon the Land and covered by this Indenture.

51. If the Indenture is terminated or is not renewed for any of the reasons stated in paragraph 45 to 49 above, the Association shall dispose of the Homesteader's interest in the Buildings and Improvements at public or private sale, whichever in its judgment shall best protect the interests of all concerned, and deliver to the Homesteader any amounts received from such sale over and above the amounts then owing by the Homesteader to the Association or the holder of any lien against the property, including all costs of effecting such sale. If the proceeds of such sale should be insufficient to satisfy such claims, the Homesteader shall be personally liable for the difference.

52. If at any time during the term of this Indenture, or any renewal thereof, the Association should be adjudicated bankrupt, or become insolvent, or be dissolved, or make a general assignment for the benefit of creditors, or take the benefit of any bankruptcy or insolvency act, or if a receiver, trustee, or assignee should be appointed for the Association's property, the Homesteader shall have the option to purchase the Land, and all Buildings and Improvements thereon, for a price equal to the cost to the Association of the Land herein indentured for the possession and occupancy of the Homesteader. The term "cost" for the purposes

of this paragraph refers to that part of the total capital investment of the Association in the Community, less any parts of such capital investment which shall have been amortized by the interest from the Land Amortization Fund described in paragraph 9 above, represented by the ratio of the Land Assessment on the Land herein indentured, to the total assessments on all the land of the Association, at the time this option to purchase becomes exercisable by the Homesteader. The Homesteader shall have no such option, however, if complete and equitable title of the land rests in the Foundation, and the Foundation succeeds to all the rights and obligations of the Association under this Indenture; unless the Foundation also becomes bankrupt, insolvent, or is dissolved.

53. This Indenture contains the entire agreement between the parties hereto.

IN WITNESS WHEREOF, the Association has caused the signature of one of its duly authorized officers to be hereto affixed, and the Homesteader has hereunto signed his name and affixed his seal as of the date first above written.

Caution: Do not use this document without consulting legal counsel. This document was drafted to conform to local law and conditions and might not be legally valid in your state and given your particular factual situation.

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Attest:

_____	_____
	<i>Chairman</i>
	_____ (L. S.)
	<i>Homesteader</i>
_____	_____ (L. S.)
<i>Secretary</i>	<i>Homesteader</i>

FORM OF ACKNOWLEDGEMENT FOR USE BY THE ASSOCIATION

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ } SS

On the \_\_\_\_\_ day of \_\_\_\_\_ in the Year \_\_\_\_\_  
 before me personally came \_\_\_\_\_, to me known,  
 who being by me duly sworn, did depose and say that he resides in the City of \_\_\_\_\_,  
 County of \_\_\_\_\_, and State of \_\_\_\_\_, that he is the  
 \_\_\_\_\_ of the \_\_\_\_\_,

*(Chairman or other officer)*

the Association described in and which executed the above instrument; that he knows the seal of said association; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Trustees of said association, and that he signed his name thereto by like order.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
*(Title)*

#### FORM OF ACKNOWLEDGEMENT FOR USE BY THE HOMESTEADER

STATE OF \_\_\_\_\_ }  
 COUNTY OF \_\_\_\_\_ } SS

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 19\_\_\_\_\_,  
 before me personally came \_\_\_\_\_

\_\_\_\_\_ to me known and known to me to be the individual(s)  
 described in and who executed the foregoing instrument, and he (they) acknowledge(s) to me that  
 he (they) executed the same.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
*(Title)*

EXHIBIT "B" AS PROVIDED FOR IN PARAGRAPH 11.

96

Estimate of money needed for the payment of obligations of the Association and expenditures for the Community for the current calendar year as enumerated in Paragraphs 7 to 11:

Budget for the Year _____	
Paragraph 7. Taxes	\$_____
Paragraph 8. Interest at 6% per annum on capital investment of \$_____	_____
Paragraph 9. Payment into the Land Amortization Fund	_____
Paragraph 10. Maintenance of Roads, etc.	_____
Paragraph 11. General Expenses	_____
Total for the year	\$_____

EXHIBIT "C" AS PROVIDED FOR IN PARAGRAPH 14 OF INDENTURE.

Apportionment for the Calendar Year of \_\_\_\_\_ as described in Paragraphs 12 and 13:

Plot No.	Acreage	Grade	Monthly Apportionment	Annual Apportionment
----------	---------	-------	-----------------------	----------------------

Paragraph 13. Monthly Installments of Land Assessment due on the first of each month of the Current Calendar Year .....

\$.....

97

**EXHIBIT "D" AS PROVIDED FOR IN PARAGRAPH 14.**

Land Assessment for the Current Calendar Year of.....as prescribed in Paragraphs 3, 12 and 13:

Paragraph 12. Total for the Current Calendar Year on Plot .....

\$.....

Paragraph 3. Balance for the Current Calendar Year for.....months beginning  
..... and  
ending .....

\$.....

## LEASE FOR POSSESSION OF LAND BRYN GWELED HOMESTEADS

98

LEASE made and entered into this.....day of....., 19....., between BRYN GWELED HOMESTEADS, a non-profit corporation whose post office address is Feasterville, Bucks County, Pa. (hereinafter referred to as the "Corporation"), and.....  
and....., whose  
present post office address is.....  
.....(hereinafter referred to as "the Member").

WHEREAS, the Corporation is engaged in the establishment, maintenance and development of the homestead community known as BRYN GWELED located in Upper Southampton Township in the County of Bucks in the Commonwealth of Pennsylvania (hereinafter referred to as the "Community") for the mutual benefit of its members, and has transferred and proposes to transfer, by instruments generally similar to this lease, the possession and occupancy of lots of land in this Community to its members; and

WHEREAS, the Member desires the possession and occupancy of the lot(s) of land hereinafter described for a homestead in the Community in accordance with the By-Laws of the Corporation;

NOW, THEREFORE, the parties hereto, for themselves and their respective heirs, executors, administrators, successors and assigns, do hereby mutually covenant and agree as follows:

### 1. TRANSFER:

1 The Corporation hereby transfers and assigns to the Member and the Member accepts from the Corporation, upon the terms and  
2 conditions herein set forth, the possession, occupancy and use of all those certain premises situate, lying and being in the aforesaid  
3 portion of Upper Southampton Township, County of Bucks, Commonwealth of Pennsylvania, bounded and described as follows:



4 containing .....  
5 acres more or less, the Land being designated as Lot(s)  
6 Number .....  
7 on the official map of the Community, a copy of which is attached  
8 hereto and designated "Exhibit A," subject, however, to all ease-  
9 ments, rights-of-way, restrictions, exceptions, reservations, liens  
10 and defects which appear in the Corporation's chain of title, and  
11 excepting and reserving to the Corporation all the oil, gas, coal  
12 and other mineral rights of whatever nature upon, in and under  
13 the said property, together with the usual mining rights, powers  
14 and privileges, including the right of access to and use of such  
15 parts of the surface of the property as may be necessary for the  
16 mining and saving of said minerals, except that the Member shall  
17 have the right to the minerals on the property but only in the  
18 amount reasonably necessary for his own use and not for the  
19 purpose of selling the same.

## 2. TERM:

20 The term of this lease shall be the period of 99 years beginning at  
21 noon on the.....  
22 day of....., 19.....  
23 and ending at noon on the.....  
24 day of....., 20.....  
25 excepting as provided in Section 10 hereof. Unless so terminated,  
26 this lease shall be automatically renewed at the end of this term  
27 and all subsequent terms for another such period.

## 3. LAND:

28 Wherever in this Lease the term "LAND" is used with refer-  
29 ence to the particular lot(s) of land possessed, occupied or used  
30 by the Member by virtue of this Lease, it shall refer to the lot(s)  
31 of land described in Section 1 above.

## 4. LAND ASSESSMENT:

32 In return for such possession, occupancy and use of the Land  
33 described above, the Member shall pay to the Corporation for the  
34 balance of the current fiscal year ending....., 19.....  
35 a sum of \$.....in equal monthly installments of  
36 \$.....each, and for the balance of the term of this  
37 Lease and any renewal thereof, an annual consideration or Land  
38 Assessment, payable in equal monthly installments, without any  
39 deduction for any set-offs or claim against the Corporation, com-

40 puted and fixed as described in Section 5 hereof, together with 99  
41 such additional charges as may become payable under Section  
42 7(g), Section 11(g) and Section 11(h) hereof.

## 5. DETERMINATION OF LAND ASSESSMENT:

43 Not later than eight days before the Annual Meeting of the  
44 Corporation the Board of Directors shall submit to the members a  
45 Budget for the following fiscal year, in which provision shall be  
46 made for:  
47 a. All taxes assessed by any government or governmental  
48 agency against the Corporation and against the land, buildings  
49 and improvements within the Community to the extent that such  
50 buildings and improvements shall be included in the assessment  
51 against the Corporation, whether or not any such buildings and  
52 improvements may be severable or may not have been fully paid  
53 for by the members building or occupying the same;  
54 b. Interest, at a rate to be fixed by the Board of Directors, upon  
55 the Corporation's capital investment in the Community, comprising  
56 (1) the price paid by the Corporation for the land; (2) expendi-  
57 tures for roads, public utilities and other permanent improve-  
58 ments; (3) legal, engineering, accounting and other development  
59 costs; and (4) any deficits resulting from the land assessment  
60 income falling short in any year of the amount expended for that  
61 year in accordance with subsections (a), (b), (d) and (e) hereof;  
62 c. Payment into a fund for amortizing the capital investment  
63 defined in subsection (b), of such an amount as the Board of  
64 Directors shall fix from time to time, not in excess in any one  
65 year of what would be required to amortize the capital investment  
66 over a period of ten years;  
67 d. The estimated cost of maintaining all roads and other im-  
68 provements undertaken by the Corporation, as well as either (1)  
69 the original cost thereof or (2) a payment into a reserve fund set  
70 up to distribute the cost of making such roads and other improve-  
71 ments over a period of years; and  
72 e. All expenses for the management of the Community during  
73 the year, and the accumulation of any contingency reserve con-  
74 sidered necessary or desirable by the Board of Directors, provided  
75 that without the consent of two-thirds of all the members of the  
76 Corporation the total estimates under (d) and (e) shall not  
77 exceed 50% of the total estimates under (a) and (b) until the  
78 capital investment shall have been completely amortized, and  
79 that thereafter the total estimates under (d) and (e) shall not  
80 exceed the total estimate under (a) without the consent of two-  
81 thirds of all the Members of the Corporation.  
82 The total Budget so computed and approved by the Corporation  
83 shall be divided among the Members of the Corporation in pro-  
84 portion to the appraised value of their respective lots, without  
85 considering the value of any buildings or other improvements  
86 thereon unless any Member of the Corporation shall have upon his  
87 lot buildings and other improvements appraised for more than 50%  
88 above the average value of the buildings and other improvements  
89 on the lots of all Members of the Corporation, in which case the  
90 appraised value of any such Member's buildings and other im-

91 improvements in excess of 50% over such average shall be added to  
92 the land value of his lot for the purpose of apportionment under  
93 this Section.  
94 The proportionate share of the total Budget thus calculated for  
95 each Member of the Corporation shall be the amount of his land  
96 assessment for the ensuing fiscal year, provided that such amount  
97 be not less than the annual economic rent of his lot without con-  
98 sidering any buildings or improvements thereon. For this purpose  
99 the annual economic rent shall be the value of the right of any  
100 Member to occupy his lot for the period of one year as appraised  
101 by or for the Corporation each year.  
102 Not later than June first of each year copies of the Budget,  
103 apportionment and calculation of his annual dues or land assess-  
104 ment in accordance with the foregoing shall be furnished by the  
105 Secretary to every Member of the Corporation. Any Member  
106 who is dissatisfied therewith may at any time before July first of  
107 the same year notify the President or Treasurer of the Corpora-  
108 tion in writing of the reasons why the same is believed to be  
109 incorrect or unreasonable, and the matter will be decided by  
110 arbitration as provided in the By-Laws of the Corporation and in  
111 this Lease.  
112 Land Assessments shall be payable in equal monthly installments,  
113 at such dates as the Board of Directors may determine. Any  
114 installment of the Land Assessment remaining unpaid after the  
115 same is due shall bear interest at the rate of 6% per annum from  
116 such due date until paid, unless by vote of two-thirds of the  
117 Members of the Corporation present at a regular meeting the  
118 payment of such interest be waived. After any such installment of  
119 the Land Assessment or any other payment due the Corporation  
120 shall have been unpaid for more than sixty days, the delinquent  
121 Member shall lose his right to vote at Meetings of the Corporation  
122 and to hold office in the Corporation so long as such amounts  
123 remain unpaid.

## 6. ARBITRATION:

124 Whenever the term "arbitration" is referred to in this Lease it  
125 shall refer to the fact that the parties hereto shall proceed in the  
126 following manner for the adjudication by a board of arbitration  
127 of any differences between them not otherwise explicitly provided  
128 for in this agreement.  
129 Either party may, by written notice to the other, appoint one  
130 arbitrator. Within ten days after such notice the other party  
131 shall, by written notice to the former, appoint a second arbitrator,  
132 and in default of such appointment the arbitrator first appointed  
133 shall be the sole arbitrator. When two arbitrators have been  
134 appointed, they shall if possible agree upon a third arbitrator and  
135 appoint him or her in writing in triplicate, signed by both of them,  
136 one copy of which shall be given to each party hereto. If ten days  
137 shall elapse after the appointment of the second arbitrator with-  
138 out the appointment of a third arbitrator, the Board of Directors  
139 of the Corporation shall appoint a third arbitrator.  
140 Upon appointment of the third arbitrator, the three shall meet  
141 and give each party an opportunity to present his case and wit-  
142 nesses (if any) in the presence of the other, and as soon as possi-

143 ble thereafter shall make their award, which shall include the 100  
144 expenses of the arbitration and an honorarium for each arbitrator  
145 of not over \$5.00 per day nor to exceed \$15.00, and assessment of  
146 same against either or both parties. The award of a majority of  
147 the arbitrators shall be binding and judgment may be entered  
148 thereon in any court having jurisdiction.

## 7. RESTRICTIONS:

149 a. The Member, during the term of this Lease, shall use (or  
150 permit the use of) the Land and the improvements thereon only  
151 for homesteading purposes, it being understood that "homestead-  
152 ing" within the meaning of this Lease is a way of living in which  
153 property is used primarily for the residence of a family group, for  
154 farming, and for productive and creative work in the home,  
155 studio, and/or workshop or on the land, primarily by members  
156 of the family group; the Member shall not, without the consent  
157 of the Corporation in writing, use the property for mercantile,  
158 commercial, manufacturing or industrial purposes.  
159 b. The Member shall not, without the consent of the Corpora-  
160 tion in writing, construct, alter, demolish or change the location  
161 of any building, fence, wall, sewage system, tank or other struc-  
162 ture or improvement of any kind which substantially affects the  
163 value or appearance of the property.  
164 c. The Member shall not make or permit any unlawful use of  
165 the property and shall not commit waste or maintain any objec-  
166 tionable garbage or refuse dump or other nuisance thereon.  
167 d. The Member may sublet his leasehold or a portion thereof  
168 (subject to the conditions hereof and to the By-Laws, rules and  
169 regulations of the Corporation) to such persons as shall be ap-  
170 proved by four-fifths of the members of the Corporation, except  
171 that for a consecutive period of less than one year, only the  
172 approval of the Board of Directors shall be required.  
173 e. The Member agrees to secure in writing consent from the  
174 Corporation for any use of the land or improvements thereon for  
175 purposes other than those described above or to which the herein  
176 contained restrictions may apply before entering on any such use,  
177 it being understood that the Member himself may determine  
178 whether the proposed use requires such consent. Should the  
179 Corporation or any other leaseholder in the Community differ  
180 with his conclusion and notify him in writing of the necessity of  
181 securing such consent, he shall forthwith cease and desist from  
182 such use until consent has been secured, and return the property  
183 to its original condition if consent should not be granted by the  
184 Corporation. In the event that any request for consent to a par-  
185 ticular use or exemption from any restriction herein agreed to is  
186 refused by the Corporation (it being understood and agreed that  
187 the Corporation must either grant or refuse its consent within  
188 thirty days after receipt of such request), the Member may appeal  
189 from such refusal to arbitration.  
190 f. The Member hereby agrees to and acknowledges the fact that  
191 the Corporation has consented to the use of land for community  
192 facilities and purposes, and agrees that any further consent by the  
193 Corporation to the use of land for such public purposes which the

194 Corporation considers will increase the beauty, healthfulness or  
195 social value of the Community does not and would not constitute  
196 a violation of the restrictions herein contained.  
197 g. The Member shall at all times maintain the Land and im-  
198 provements in a clean and healthful condition, keep the buildings  
199 and structures painted and in repair, keep the Land free from  
200 noxious weeds and brush, prevent and control erosion of the soil,  
201 and spray, fumigate or otherwise treat all trees, shrubs and other  
202 plants on the Land to prevent the growth and/or spread of agri-  
203 cultural pests. If the Member fails to so maintain the Land and  
204 improvements after due notice, the Corporation may enter upon  
205 them and do so for his account, in which case the cost of such  
206 maintenance shall constitute an additional Land Assessment, pay-  
207 able forthwith on demand and bearing interest at the rate of 6%  
208 per annum from the date such Land Assessments are incurred  
209 until repaid.

#### 8. BUILDING AND IMPROVEMENTS:

210 Whenever in this Lease either or both of the terms "Buildings"  
211 and "Improvements" are used, they shall refer to any and all  
212 manner of additions or changes made on or in the Land, including  
213 residences, barns, outbuildings, wells, cisterns, sewage and drain-  
214 age systems, paths and roads, fences, trees, plants and topsoil, any  
215 or all of which may have been developed or constructed on or in  
216 or added to the Land and which are immediately or ultimately the  
217 effect of and caused by labor exerted or materials placed upon or  
218 in the Land by or for the Member.

#### 9. TRANSFER AND ENCUMBRANCE:

219 The Member shall not, without prior consent in writing by the  
220 Corporation, transfer, sell, assign or encumber in any manner any  
221 of his rights or interests under this Lease, or his title to the build-  
222 ings and/or other improvements on the Land except in accordance  
223 with the By-Laws and the rules and regulations of the Corpora-  
224 tion. Any attempt at such transfer or encumbrance shall consti-  
225 tute a breach of this Lease and shall entitle the Corporation, at its  
226 discretion, to terminate this instrument.  
227 The Corporation shall have the right, but shall be under no  
228 duty, to prosecute or defend, in its own or the Member's name, any  
229 actions or proceedings appropriate or necessary for the protection  
230 of the title to or possession of or any other interest in the Land  
231 and buildings and improvements.  
232 This Lease shall be subordinate to and subject to the lien of  
233 any mortgage, deed of trust or other security instrument hereafter  
234 executed or created by the Corporation in order to secure the  
235 repayment of money borrowed by the Corporation to finance the  
236 construction by the Member of improvements upon the Land or to  
237 finance the liquidation of the Member's interests in such improve-  
238 ments by lending him a portion of their value; provided, however,  
239 that such security instrument shall not be given to secure a sum  
240 of money in excess of the sum actually loaned to the Member.

241 The Corporation must agree to provide for the retirement of any 101  
242 such mortgage indebtedness as rapidly as payments are made by  
243 the Member. The Member agrees to execute, at the Corporation's  
244 expense, any instrument which the Corporation may deem neces-  
245 sary or desirable to effect the subordination of this Lease to any  
246 such security instrument for the purpose above stated, and the  
247 Member hereby appoints the Corporation his attorney-in-fact,  
248 irrevocable during the term hereof, to execute any such subordina-  
249 tion instrument.

#### 10. CONTINUANCE OR TERMINATION OF THIS LEASE:

250 The continuance of this Lease or any renewal thereof is depend-  
251 ent upon faithful observance of the provisions of this Lease, of the  
252 By-Laws of the Corporation and of the rules and regulations of  
253 the Corporation, by the parties hereto.  
254 If and when this Lease shall be terminated, for any reason, in  
255 accordance with the terms of this Lease or the By-Laws or any  
256 amendments or Rules and Regulations of the Corporation, the  
257 Member agrees quietly and peaceably to remove from the Land  
258 and surrender possession and occupancy thereof within thirty days  
259 after such termination.  
260 In the event of such termination, the Corporation may, at the  
261 end of thirty days or at any time thereafter re-enter the Land and  
262 remove all persons and/or property therefrom, either by summary  
263 dispossession proceedings or by any suitable action or proceeding at  
264 law or otherwise, without being liable to prosecution for damage  
265 therefor. The Member hereby expressly waives any and all rights  
266 of redemption and any and all other rights afforded by law in case  
267 he shall be dispossessed by judgment or warrant of any court or  
268 judicial officer, and he also waives all rights to trial by jury in any  
269 summary or other proceeding thereafter instituted by the Corpora-  
270 tion against the Member in respect to the Land and improvements  
271 thereon within two years after the termination of this Lease. The  
272 terms "re-enter" and "re-entry" as used in this Lease are not  
273 restricted to any technical meaning. In event of any breach or  
274 threatened breach by the Member of any of the covenants or pro-  
275 visions hereof, the Corporation shall have the right of injunction  
276 and the right to invoke any remedy allowed at law or in equity as  
277 if re-entry, summary proceedings and other remedies were not  
278 provided for.  
279 Upon the expiration or termination of this Lease for any cause,  
280 the Member shall be entitled to the value of his interest in any  
281 buildings or improvements on the Land and covered by this Lease,  
282 as provided in the By-Laws of the Corporation; but such right  
283 shall not suspend the right of the Corporation to possession and  
284 occupancy as set forth in the preceding paragraphs.  
285 If this Lease is terminated or is not renewed by the Corporation  
286 for cause according to its By-Laws and if the Member does not  
287 remove from the premises within thirty days as herein required,  
288 the Corporation may dispose of the Member's interest in the  
289 buildings and improvements at public and/or private sale, which-

290 ever in its judgment will best protect the interests of all con-  
 291 cerned, and deliver to the Member any proceeds from such sale  
 292 over and above the amounts then owing by the Member to the  
 293 Corporation or to the holder of any lien against the buildings  
 294 and/or improvements, including all costs of the sale. If the pro-  
 295 ceeds of such sale should be insufficient to satisfy such claims, the  
 296 Member shall be personally liable for the difference.  
 297 If at any time during the term of this Lease the Corporation  
 298 should be adjudicated bankrupt or become insolvent or be dis-  
 299 solved or make a general assignment for the benefit of creditors,  
 300 or take the benefit of any bankruptcy or insolvency act, or if a  
 301 receiver, trustee or assignee should be appointed for the Corpo-  
 302 ration's property, the Member shall have the option to purchase  
 303 the Land and all buildings and improvements thereon not already  
 304 belonging to him for a price equal to the cost to the Corporation  
 305 of the Land leased for the possession and occupancy of the Mem-  
 306 ber and of such buildings and improvements. The term "cost" for  
 307 the purpose of this paragraph refers to that part of the total  
 308 capital investment of the Corporation in the Community, less any  
 309 parts of such capital investment which shall have been amortized  
 310 as described above, represented by the ratio of the Land Assess-  
 311 ment on the Land herein leased to the total Land Assessments on  
 312 all the assessed land of the Corporation at the time such option  
 313 becomes exercisable by the Member, as provided in the By-Laws  
 314 of the Corporation.

## 11. MISCELLANEOUS PROVISIONS:

315 a. During the term of this Lease the Member shall be entitled  
 316 to use any property which the Corporation may from time to time  
 317 designate and set aside for community uses, subject to such rules  
 318 and regulations as the Corporation may prescribe.  
 319 b. The Corporation agrees that all other lots of land shown on  
 320 the official map of the Community shall be disposed of only by  
 321 leases containing substantially the same provisions as are in this  
 322 Lease, or if substantial modifications in such provisions are made,  
 323 the Member shall be given the benefit of such modifications; ex-  
 324 cept that those lots of land which are shown on the map as reserved  
 325 for community uses shall not be so leased without approval by a  
 326 majority of the members of the Corporation.  
 327 c. It is understood and agreed that this Lease is appurtenant  
 328 to membership in the Corporation by the Member, and that termi-  
 329 nation of such membership for any reason whatsoever shall  
 330 terminate any and all of the Member's rights in and under this  
 331 Lease except as herein otherwise expressly provided and in  
 332 accordance with the By-Laws of the Corporation.  
 333 d. The failure of the Corporation in any one or more instances  
 334 to insist upon strict performance of any of the covenants of this  
 335 Lease or any other such lease, or to exercise any option herein  
 336 conferred, shall not be construed as a waiver or relinquishment of  
 337 any such covenants, conditions or options, but the same shall con-  
 338 tinue in full force and effect.  
 339 e. In the event of any disagreement between the parties hereto  
 340 not specifically provided for in this Lease, the matter shall be sub-

mitted to arbitration.

342 f. Whenever in this Lease the term "notice" is used or any  
 343 requirement is made that either party hereto be advised by the  
 344 other, such requirement shall be construed as satisfied if and  
 345 when such notice or advice in writing is delivered in person or is  
 346 mailed to the last known post office address of the party to be  
 347 notified.

348 g. If the Member shall suffer any lien to be placed upon or  
 349 against the property of the Corporation on account of any material  
 350 or labor used in making any decorations or repairs on the demised  
 351 premises chargeable to said Member under the terms hereof, then,  
 352 upon the happening of such lien, this Lease shall at once become  
 353 null and void, at the option of the Corporation, or the Corpora-  
 354 tion may, at its option, pay and discharge or purchase any such  
 355 lien, and require the amount expended by it therefor to be forth-  
 356 with repaid by the Member as additional rental or assessment  
 357 under the terms hereof.

358 h. The Member shall pay all service bills rendered against or  
 359 charged upon said demised premises, and in case the Member shall  
 360 not pay the same when due and payable the Corporation may pay  
 361 the same, and the amount so paid is hereby declared to be an addi-  
 362 tional rent for the ensuing year and payable with the next install-  
 363 ment thereof.

364 i. The Member hereby empowers the prothonotary or any  
 365 attorney of any court of record to appear for the Member in any  
 366 action or actions which may be brought for rent or charges re-  
 367 served as rent in an amicable action of ejectment and hereby  
 368 authorizes a confession of judgment against the Member for  
 369 possession, arrearages, interest, costs and attorney's commission  
 370 of 5% and hereby waives benefit of all exemption laws now or  
 371 hereafter in force and agrees that goods or property on the de-  
 372 mised premises may be distrained upon; and does further waive  
 373 benefit of any and all stay of execution or exemption from civil  
 374 process against persons in the military service of the State or the  
 375 United States, and does further expressly agree that execution  
 376 for possession of damages or otherwise may issue upon any  
 377 judgment entered in any proceedings hereon immediately upon  
 378 entry thereof.

379 j. All provisions of this Lease are subject to and should be  
 380 performed in accordance with the By-Laws of the Corporation as  
 381 existing at the time of performance, including all amendments  
 382 thereto, and nothing herein contained shall be construed as nulli-  
 383 fying or in any way superseding any portion of said By-Laws; and  
 384 the Member hereby agrees to abide by the said By-Laws and  
 385 amendments and by such rules and regulations as may from time  
 386 to time be made by the Corporation in accordance therewith. In  
 387 any case of misunderstanding as to the meaning of the provisions  
 388 of this Lease or of the By-Laws or Rules and Regulations of the  
 389 Corporation, the interpretation of the Board of Directors as to  
 390 their true intent shall govern.

**12. LEASE:**

391 This LEASE, together with the By-Laws, Amendments thereto  
392 and Regulations of the Corporation, contain the entire agreement  
393 between the parties hereto.

Caution: Do not use this document without consulting legal counsel. This document was drafted to conform to local law and conditions and might not be legally valid in your state and given your particular factual situation.

103

IT WITNESS WHEREOF, the Corporation has caused the signatures of its duly authorized officers to be hereto affixed together with its corporate seal, and the members above mentioned have hereunto signed their names and affixed their seals as of the date first above written:

**BRYN GWELED HOMESTEADS:**

\_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary

**MEMBERS:**

\_\_\_\_\_  
L. S.

\_\_\_\_\_  
L. S.

Witness:

Sealed, signed and delivered in the presence of:

\_\_\_\_\_  
\_\_\_\_\_

JEWISH NATIONAL FUND

CONTRACT FOR LEASE OF A FARM \*  
between  
The Jewish National Fund and \_\_\_\_\_

(Omitted from this appendix are the numerous blanks at the beginning which identify the parcel, the JNF acting on behalf of the "landowner" which will be referred to as "The Landlord", and the names of the lessees, referred to as "The Tenant".)

1. In this contract THE HOLDING refers to the land known as \_\_\_\_\_  
(description of the land)  
A total area of approximately \_\_\_\_\_  
dunams, registered in the land register at \_\_\_\_\_, and including trees, buildings, permanent installations on it and also water rights, etc. connected with it and to be added to it, and not including antiquities, quarries, oil, water wells, stone and sand quarries, as detailed and marked in the colour \_\_\_\_\_ in the plan appended to this contract, signed by both parties and constituting an inseparable part of it.

Period of Lease: commencing on \_\_\_\_\_  
and ending on \_\_\_\_\_.

## 2. AGREEMENT BETWEEN THE PARTIES

The landlord hereby leases to the tenant and the tenant rents from the landlord the holding for the period of the lease.

## 3. THE PURPOSE OF THE LEASE

The purpose of the leasing is the setting up of a farm by the construction of a dwelling for the tenant and the permanent settlement of the tenant on the holding, the setting up of farm buildings and utilization of the land for agriculture, on the specific condition that the tenant

must not—unless otherwise stated in this contract—employ the holding for any other purpose.

## 4. RENT

a) Dependent on the conditions stated in para (b) the annual rent for the holding is \_\_\_\_\_.

b) The rent will be linked to the cost of living index. The calculation of rent according to the new index will be carried out every year on the first day of April of the same year. The cost-of-living index on the date of the commencement of the lease is \_\_\_\_\_ points (Basic Index).

If the cost of living index should rise above the Basic Index, the rent will be the basic rent as specified in para (a), increased at the same relative rate as the increase in the new index as compared with the basic index.

COST-OF-LIVING INDEX or INDEX—  
the index of prices, including fruit and vegetables, published by the Central Bureau of Statistics and Economic Research, including the same index if published by any other governmental institution and also including any official index which may replace it, whether drawn up according to the same data as the existing index or not. Should another index be introduced, the Central Bureau of Statistics and Economic Research will determine the ratio between it and the old index.

c) The TENANT undertakes to pay the annual rent every \_\_\_\_\_ in advance, at the offices of the Landlord or any other location decided on by the Landlord.

d) The TENANT undertakes to pay interest at the highest rate determined by law for the date of payment for any sum overdue from the date established for payment till the date of actual payment.

## 5. POSSESSION

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a) The TENANT hereby confirms that he has received the leased property into his sole maintenance on \_\_\_\_\_ and that he has seen it and accepts it in its present condition and waives all claims regarding said property.

b) The TENANT undertakes to safeguard the property against damage and trespassing and the LANDLORD is not responsible for any such damage and trespassing. In case of trespassing, the tenant undertakes immediately to employ all necessary means in order to restore the borders of the property to their condition before the trespassing.

## 6. REGISTRATION OF THE LEASE IN THE LAND REGISTER

a) Dependent on the conditions of paras b and c of this section, the LANDLORD undertakes to register the lease in the Land Register Office within six months after the registration of the leased property in the Land Register in the name of the landowner and after the implementation of the division or separation necessary to enable it to be registered in the Land Register and after \_\_\_\_\_.

b) The TENANT will prepare the files in the Land Register Office, pay transfer taxes, the cost of preparing the files and any payment connected with the transfer without exception.

c) The TENANT is aware that the leased property has not yet been registered in the name of the owners and/or as a result of the lack of Land Registers it is not possible to register the leasing to the benefit of the leased property as long as abovesaid registration has not been carried out/renewed. The LANDLORD undertakes to carry out all the activities for the registration of the leased property/renewal of the regis-

tration of the leased property in the Land Register — including surveying and preparation of maps — in accordance with conditions — at the expense of the TENANT. In addition the TENANT will bear the cost of any division regarding the property. The TENANT undertakes to pay the necessary sums to cover expenditure to the LANDLORD at the latter's demand.

#### 7. UTILIZATION OF THE HOLDING

a) During the period of the lease the TENANT may utilize the holding and act within it as if he were the owner; but he must only employ his rights within the limits of the specific conditions laid down in this contract of lease and for the purposes specified herein.

b) So as to implement the aims of the leasing the TENANT is obliged to dwell permanently on the holding and is permitted to dig holes and wells for water in the ground, to use the water for irrigation purposes, to set up buildings directly needed for the purposes of the farm (and to build dwellings for himself), fences, to lay down paths and roads within it, to dig conduits, construct a drainage system, lay pipes, lay wires, arrange electrical installation, and carry out any other work in the ground which serves to further the aims of the said lease, on condition that he receives the necessary permits from the authorities.

c) The Tenant undertakes to cultivate and utilize the entire area of the holding for agricultural purposes, to plant seedlings, to employ accepted agricultural methods and to maintain the cultivation during the entire period of the lease, and he is forbidden to do anything which may adversely affect its quality.

d) The LANDLORD may, himself or through others, or permit another person or body to lay on, above or under

the holding water pipes, conduits, drainage, gas pipes, electricity or similar installations. The TENANT undertakes to enable workers carrying out these works to enter the holding and carry out the necessary work and also such repairs as may be necessary from time to time. The TENANT will be entitled to compensation for any damage caused to the holding as a result of these works from the LANDLORD and/or implementors of the work. If the parties cannot reach agreement regarding the amount of compensation, the sum will be determined by the Minister of Agriculture, or some other person appointed by him for this purpose.

#### 8. RESPONSIBILITY OF THE TENANT FOR DAMAGE

a) From the date of receipt of possession as stated in Section 5, the tenant is responsible to the Government and also to any authority, including the owners, body or person for any transgression or damage caused, or fine, or compensation fixed as a result of the possession, utilization and management of the holding, work on it and any other activities in it or connected with it and the landlord bears no responsibility thereof.

b) The TENANT undertakes, during the period of the lease to carry out all the instructions of the law, and all regulations, instructions and demands of the government, the local authority and other authorities with regard to activity within the holding.

c) If the owners or the landlord should be called on to pay any sum whatsoever as a result of the reasons specified in para (a), the tenant undertakes to refund to the landlord within 14 days of receipt of the landlord's demand any sum paid by him including law-suit costs, and lawyers fees caused thereby and an account presented to the tenant by the land-

lord with regard to these expenditures will serve as sufficient proof of the veracity of the sum paid on prior condition that the landlord must inform the tenant at the earliest possible opportunity of any such demand, so as to enable the tenant to defend his rights.

#### 9. TAXES AND DEVELOPMENT PAYMENTS

The tenant undertakes to pay all taxes, property tax and all compulsory payments due from the holding from \_\_\_\_\_ to the end of the period of the lease regardless of whether these are to be paid by the tenant or the owner. The tenant also undertakes to pay all development costs for the leased property, including those involved in the connecting of electricity, water, drainage installation, construction of roads and pavements etc. Should any of these sums be paid by the landlord, the tenant undertakes to reimburse the landlord within 14 days of demand.

#### 10. TRANSFER OF THE LEASE

The tenant may not lease, or sub-let or transfer the holding or any part of it or permit the use and/or possession of or other benefit from the holding or any part of it directly or indirectly unless he has obtained the permission of the landlord in advance in writing.

#### 11. MORTGAGING OF THE RIGHT OF LEASE

The tenant may mortgage his right of lease of the property or any part of it, and mortgage the equipment, fruits, crops and income from the holding, on condition that he obtain the permission of the landlord in writing in advance.

#### 12. INSPECTION

The landlord has the right, at any

time, through his emissaries, experts or other representatives, to visit the holding or any part of it so as to examine the tenant's utilization of it.

### 13. VIOLATION OF THE AGREEMENT

a) If the tenant should violate or fail to carry out any instruction and/or undertaking specified in this contract, the landlord may render the contract null and void by notification in a registered letter, regarding the entire holding or any part of it.

b) Without affecting the generalities of the terms of para (a) the following will serve in particular as reasons for the voiding of the contract:

- 1) The utilization of the holding or any part of it for purposes other than that specified in the contract and/or contrary to Section 7 above.
- 2) Neglect to cultivate the holding or any part of it.
- 3) Arrears in payment of rent or any other payment for three years.
- 4) The transfer of rights contrary to Section 10, above.

c) If the landlord should wish to exercise his right according to this Section, he must give the tenant prior notice in a registered letter in which the tenant will be called on to correct or eliminate the violation within three months of the date of the notice.

### 14. COMPENSATION

If the tenant should violate any of the conditions of this contract, he will be obliged to compensate the landlord and/or owners for any damage, expense or loss incurred in connection with the holding by this violation. This order does not diminish but augments the landlord's right to cancel the lease in full

or in part as stated in Section 13.

### 15. CHANGE OF THE DESTINED USE OF THE LAND

It is agreed between the parties that should the authorities change the destined use of the area of the holding or any part of it to non-agricultural aims by an authorized town-plan, the landlord may, despite all that has been stated in this contract, bring about the earlier termination of the period of lease of the holding or any section of it the destined use of which has been changed, by prior notice of at least one year. In this case the tenant has the right to demand of the landlord full compensation for the holding or any part of it the lease of which has been cancelled, according to its condition on the date of the termination of the lease by landlord's notification, excluding the value of the land. If the parties are unable to reach agreement regarding the sum of compensation, this will be determined by a government assessor, whose decision will be final. It is a specific condition that the lack of agreement on compensation will not postpone the tenant's obligation to hand over the holding or part of it, regarding which the lease has been cancelled, to the landlord.

### 16. CANCELLATION OF THE CONTRACT

Excepting the case specified in Section 15, in any case where the landlord exercises his right to cancel this contract with regard to the holding, the tenant undertakes to return it to the landlord without the latter being obliged to pay him compensation on condition that the landlord, if he lease the holding or part of it, after its return to him, to some other person, endeavor to obtain from the new tenant suitable compensation for the buildings, plantations, wells, installation or other investment, built,

planted, dug, arranged or invested by the tenant and to hand this compensation over to the tenant immediately on receipt of the sum from the new tenant, to the extent that he receives it, after deduction of the sums owed by the tenant to the landlord according to this contract.

### 17. HANDING OVER OF THE HOLDING ON TERMINATION OF THE LEASE

a) On termination of the lease the tenant undertakes to return the holding to the landlord in good condition, clean and complete and undertakes not to uproot any plantation and/or destroy any building and/or take down any permanent installation.

### 18. LEGAL RELATIONSHIP UNTIL REGISTRATION OF THE LEASE

It is agreed between the parties that the exact area of the holding will be determined at the time of registration of the lease in the Land Register and that until the registration of the right of lease according to this contract in the Land Register the landlord grants the tenant the right of utilization and maintenance of the holding and all instructions in this contract regarding the lease and its condition will apply to the right of utilization; the tenant will be obliged to pay utilization fees for the holding to the same sum and under the same conditions as the rent.

### MISCELLANEA

19. Both parties waive the necessity of sending notarial notices regarding this contract, and the violation itself of one of the conditions of this contract will serve instead of such notice.

20. No concession, granting of reduction, refraining from activity or granting of extension by the landlord to the tenant will be regarded as a waiving



of his rights or will serve as cause for legal demands, unless he has specifically waived his rights in writing.

21. The landlord may transfer his rights under this contract without obtaining the tenant's permission. The tenant undertakes, in the event of such transfer, to fulfill all his obligations under this contract toward the recipient of the transfer.

22. The rights granted to the tenant under this contract are full remuneration for the tenant's investment in buildings, plantations, improvements, innovations etc. in the holding resulting from his obligations under this contract.

23. The parties agree herewith that all the conditions of this contract are primary and equal conditions.

24. For the purposes of this contract the address of the parties will be:

- a) The Landlord \_\_\_\_\_
- b) The Tenant \_\_\_\_\_

Each party must immediately inform the other, by registered letter, of any change in address.

#### 25. SPECIAL CONDITIONS. . . .

(The document concludes with the various required signatures and certifications.)

**Caution:** Do not use this document without consulting legal counsel. This document was drafted to conform to local law and conditions and might not be legally valid in your state and given your particular factual situation.

\*This document was translated from the Hebrew for International Independence Institute.

#### MORTGAGING PROPERTY ON LEASED LAND (BRYN GWELED)

The following papers describe principles and procedures used by Bryn Gweled Homesteads to permit members to use the value of the land they have leased from the Bryn Gweled corporation to secure mortgages to finance construction or other improvements. Banks are usually reluctant to lend money to build a house when the land accompanying the house is not owned by the mortgagor because in case of a default it would be difficult to sell such an "unsupported" house to a member of the general public. Thus an attempt is made here to satisfy a bank's requirements while protecting Bryn Gweled from loss of its trustery.

The agreements, affidavits, and mortgage supplement, in short, provide for and assure the following:

The corporation (Bryn Gweled Homesteads) certifies that the "member mortgagors" are lessees, and promises the bank (mortgagee) that in the event of default and sheriff's sale to settle the claim, no claim will be made against the title so acquired. This allows the bank to sell the total property (house and lot). At the same time, the corporation protects itself in three ways:

1. The bank agrees that the corporation is not liable on the mortgage except in the extent of the bond.

2. The mortgagor (lessee) agrees to show the corporation receipts of his payments on the mortgage, and the bank agrees not to foreclose without giving fifteen days notice to the corporation; it further agrees that it will accept payment in the amount of the arrears from the corporation. In case of repeated defaults the bank agrees to allow the corporation, if it so wishes, to pay off the entire mortgage and to become the mortgagee itself.

3. The corporation agrees to join with the member mortgagor in the mortgage execution, but preferably not in the bond. At the same time, the member mortgagor executes a "judgment note" in favor of Bryn Gweled Homesteads, in the amount of the mortgage, which is not "entered of record" unless there is a default in payment ("Copy of Note Accompanying Bond"). This means that the member mortgagor automatically is liable for any payments the corporation makes to the bank to clear a default on the mortgage.

In effect, in the event of default, the corporation agrees to accept loss of the title if the property is foreclosed; but, to prevent such foreclosure, the bank agrees to give the corporation the chance to make the delinquent payment; and the member agrees that if he defaults that he will be liable to a judgment against him in the amount of the mortgage bond, and will retain no hold on the property.

#### Certifications by the Secretary of Bryn Gweled In Connection with Mortgages

I, \_\_\_\_\_, Secretary of Bryn Gweled Homesteads, do hereby certify that \_\_\_\_\_ and \_\_\_\_\_, his wife, are members of the said Corporation and as such became lessees under the charter, a member and a lessee being synonymous, and that at a regular meeting of the Corporation held (date) \_\_\_\_\_ the lot known as Lot # \_\_\_\_\_ on the Plan recorded in (book ident.) \_\_\_\_\_, was assigned to and accepted by the said \_\_\_\_\_ and \_\_\_\_\_, his wife.

IN WITNESS WHEREOF. . . etc.

I, \_\_\_\_\_, Secretary of Bryn Gweled Homesteads, a Pennsylvania

Corporation, do hereby certify that, at a meeting of the members of the said Corporation duly called in accordance with the charter and by-laws, of which meeting all the members were given notice in accordance with the by-laws and at which a quorum was present, held at (place and date), the following motion was made, seconded and carried:

"Upon motion duly made, seconded and carried, the proper officers of Bryn Gweled Homesteads, a Pennsylvania Corporation, are hereby authorized to execute and deliver a Mortgage, Bond, and Warrant to \_\_\_\_\_ on the lot or piece of ground leased to \_\_\_\_\_ and \_\_\_\_\_, his wife, known as \_\_\_\_\_ (lot, plan no., etc.) and does hereby agree and certify that the said corporation will raise no question or claims against a purchaser at a sheriff's sale under said mortgage or Bond, that the title so acquired shall limit the liability of Bryn Gweled Homesteads to the real estate described above, that this Corporation assumes no liability by reason of the same, and that this resolution be incorporated in and form a part of the said Mortgage."

IN WITNESS WHEREOF. . . etc.

Copy of Minutes in Connection with Mortgage

Upon motion duly made, seconded and carried it was moved that before this Corporation's officers deliver the Mortgage requested by \_\_\_\_\_ and \_\_\_\_\_ his wife, that they require as a consideration therefore the following from the Mortgagors and Mortgagee:

1. The tenant should execute immediately a judgment note payable one day after date and dated the same day as the mortgage for the same amount as the bond accompanying the Mortgage in favor of Bryn Gweled Homesteads. The

judgment note will not be entered of record unless there has been a default in the payment of interest, a default in the payment of installments, a default in the payment of rent or assessments to the Corporation, or a default in the production of receipts for interest payments, to the Association.

2. The Bryn Gweled Homesteads will execute the Mortgage but will, if possible, avoid joining in the Bond. The Mortgage must contain a provision that there is no personal liability on the part of the Corporation that its liability on it is limited to the real estate covered by the mortgage.

3. The tenant shall agree to produce for inspection of the Corporation receipts for interest and/or installments on Mortgage within fifteen days after the same become due and payable, if monthly, but if the installments or interest are quarterly or every six months, then a thirty day period will be sufficient.

4. The Mortgagee shall execute a written instrument and deliver the same to our attorney whereby it will agree not to commence foreclosure on the said Mortgage until after the said Mortgagee has given fifteen days' written notice to this Corporation of any default in the terms of the said Mortgage given by \_\_\_\_\_ and \_\_\_\_\_ his wife, that it will agree to accept from this Corporation, payment of any interest or installments in arrears and that it will agree to transfer and assign the said Mortgage to this Corporation upon receipt of the balance of principal and interest due on the said mortgage.

The above motion was duly made, seconded and passed at a general meeting of Bryn Gweled Homesteads, \_\_\_\_\_ (date) \_\_\_\_\_.

\_\_\_\_\_  
Secretary

Approved:

\_\_\_\_\_  
(Mortgagee's Signature)

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Copy of Note Accompanying "Bond" in Connection with Mortgage

\$ \_\_\_\_\_ Doylestown, Pa., (date) \_\_\_\_\_

\_\_\_\_\_ after date we promise to pay to Bryn Gweled Homesteads, or order, the sum of \$ \_\_\_\_\_ with interest at the rate of \_\_\_\_\_ per centum, without defalcation, for value received.

AND FURTHER, we do hereby authorize and empower the prothonotary or clerk or any attorney of any Court of Record in the state of Pennsylvania, or elsewhere, to appear for us and enter or confess judgment against us for the above sum, with or without declaration with costs of suit, release of errors, without stay of execution and with an attorney's fee of \_\_\_\_\_ per centum added for collection fees; and we further, for ourselves, our heirs, executors, and administrators, waive the right of inquisition on any real estate that may be levied upon to collect this note, and do hereby voluntarily condemn the same and authorize the Prothonotary or clerk to enter upon the writ of fieri facias our said voluntary condemnation, and we further agree that such real estate may be sold on a writ of fieri facias and we hereby also waive, relinquish and release all relief from any and all appraisement, stay, or exemption laws of any state now in force or which may hereafter be enacted.

AND it is hereby expressly agreed and declared by and between parties hereto that this is not a purchase money obligation; that it is subject both in lien and payment, to a certain mortgage debt of sum of \_\_\_\_\_ dollars, with in-

terest, secured upon the real estate described in \_\_\_\_\_ certain indenture of mortgage given and executed by Bryn Gweled Homesteads et al to \_\_\_\_\_, dated \_\_\_\_\_, and intended to be forthwith recorded; that if the real estate described in the said mortgage, or any part thereof, is sold by the sheriff upon proceedings on any judgment entered upon this note such sale shall be advertised and made subject to the above mentioned mortgage, the principal of which with all interest due and to grow due thereon, shall remain undischarged and in every way unaffected by such sale; and that if the said real estate described in the said mortgage is sold at any judicial sale under or by virtue of any order, decree or judgment whatsoever of any court in Pennsylvania or elsewhere, other than in an action upon the said mortgage itself, the said mortgage and all moneys, principal and interest due and to grow due thereon, shall remain undischarged and in every way unaffected by such sale.

IN WITNESS WHEREOF. . . etc.

#### Supplement to Mortgage

I, \_\_\_\_\_, Secretary of Bryn Gweled Homesteads, a Pennsylvania Corporation, do hereby certify that, at a regular meeting of the members of said Corporation held at the Community Center on \_\_\_\_\_ (date) \_\_\_\_\_, at which a quorum was present and voting the following resolution was made, seconded, and carried:

RESOLVED that the proper officers of Bryn Gweled Homesteads, a Pennsylvania Corporation, are hereby authorized to execute and deliver a Mortgage and Bond to \_\_\_\_\_ (name of the bank) on Lot No.

\_\_\_\_\_ on the Plan of Bryn Gweled Homesteads recorded in Bucks County, Pennsylvania, in (book page, and plan) \_\_\_\_\_ leased as of \_\_\_\_\_ (date) \_\_\_\_\_ by Lease No. \_\_\_\_\_ to \_\_\_\_\_ (names of mortgagors), and that said Corporation hereby agrees that it will in no-wise question, deny or make any claim against the title of the purchaser at any sherriff's sale held under the provisions of said Mortgage or Bond, provided that the following language shall be physically incorporated in and form part of said Mortgage and Bond, respectively:

"PROVIDED, HOWEVER, That the Liability of Bryn Gweled Homesteads, one of the Mortgagors, is limited to the real estate conveyed by the Mortgage; and that there is no personal liability on the part of Bryn Gweled Homesteads or its officers or members; and that the Mortgagee shall not commence foreclosure on the Mortgage unless and until a default under the Mortgage or the Bond remains uncured for thirty days after the Mortgagee has given written notice of such default to Bryn Gweled Homesteads; and that each default, if any, from time to time may be cured by payment by Bryn Gweled Homesteads of the amount in default within such thirty day period; and that if any payments due under the Mortgage or the Bond shall have been made to the Mortgagee by Bryn Gweled Homesteads or if Bryn Gweled Homesteads requests the Mortgagee so to do then upon eventual payment in full of all sums due under the Mortgage and Bond the Mortgagee shall transfer and assign the Mortgage and Bond to Bryn Gweled Homesteads in lieu of satisfying the same; but that subject to the foregoing Bryn Gweled Homesteads shall in no wise question, deny or make any claim against the title of the purchaser at any sheriff's sale held under the provisions of this Mortgage and accompanying Bond."

"AND PROVIDED HOWEVER That this Bond is further conditioned that the liability of Bryn Gweled Homesteads, one of the Obligors, is limited to the real estate conveyed by the Mortgage; and that there is no personal liability on the part of Bryn Gweled Homesteads or its officers or members; and that the Obligee shall not commence foreclosure on the Mortgage unless and until a default under the Mortgage or the Bond remains uncured for thirty days after, the Obligee has given written notice of such default to Bryn Gweled Homesteads; and that each default, if any, from time to time may be cured by payment by Bryn Gweled Homesteads of the amount in default within such thirty day period; and that if any payments due under the Mortgage or the Bond shall have been made to the Obligee by Bryn Gweled Homesteads or if Bryn Gweled Homesteads requests the Obligee so to do then upon eventual payment in full of all sums due under the Mortgage and Bond the Obligee shall transfer and assign the Mortgage and Bond to Bryn Gweled Homesteads in lieu of satisfying the same; but that subject to the foregoing Bryn Gweled Homesteads shall in no wise question, deny or make any claim against the title of the purchaser at any sheriff's sale held under the provisions of the Bond and Mortgage"; and

That before this Corporation's officers deliver said Mortgage and Bond, they require as consideration therefor the following from the Member Mortgagors, and the Mortgagee:

(1) Execution by the Member Mortgagors of a judgment note payable to the order of Bryn Gweled Homesteads and dated the same day as the Mortgage for the same amount as the Bond accompanying the Mortgage, said judgment note to be held by the Corporation as security for the performance by the Member Mortgagors of all duties under the Mortgage and for the prompt reimbursement

to the Corporation of any and all sums expended by the Corporation to cure defaults or to foreclose on the Mortgage including counsel fees, taxes and all other expenses relating to the Mortgage and the Bond, but such judgment note not to be entered of record unless there has been a default in the payment of installments, a default in the payment of rent or assessments to the Corporation, or a failure by the Member Mortgagors to produce receipts for interest and installment payments or to make prompt reimbursement to the Corporation of its expenses as above set forth.

(2) Agreement by the Member Mortgagors to reimburse the Corporation for all expenses incurred by it in connection with the loan, the Mortgage and the Bond, and to produce for the inspection of the Corporation receipts for interest and/or installments on the Mortgage within fifteen days after the same become due and payable, if monthly, or if the interest and installments are payable quarterly or semiannually then within thirty days after the same become due and payable, said agreement to be evidenced by the approval noted hereon of said Member Mortgagors.

(3) Agreement by the Mortgagee to incorporate physically in said Mortgage and Bond the provisions quoted above and in connection with any construction loan to accept assignment to Bryn Gwelled Homesteads by the Member Mortgagors of all their right, title and interest therein if such be made, said agreement to be evidenced by the approval noted hereon of said Mortgagee.

IN-WITNESS WHEREOF. . . etc.

Caution: Do not use this document without consulting legal counsel. This document was drafted to conform to local law and conditions and might not be legally valid in your state and given your particular factual situation.

**MEMORANDUM**  
**New Community Trust**  
a nominee trust  
of  
**Interseminarian, Inc.**

\$20,000  
6-1/2 Subordinated Notes  
due December 31, 2001

Consisting of  
10 Notes of \$2,000 each

(For Informational Purposes Only; this memorandum does not constitute an offering.)

**INTRODUCTION**

Over the past year all of the people who make up the Intersem\* Community—staff members, their families, the many volunteers, and the host of young people who are the object of Intersem's services—have had the benefit of full use of a small farm in Greenville, New Hampshire. Hundreds of people have taken advantage of this opportunity and enjoyed it, in a multitude of ways. The farm has become an integral part of the Intersem program.

Because of the farm's importance the Board of Directors of Intersem considered it desirable to acquire the property. The New Community Trust was established for the purpose of making this acquisition possible.

The Directors hope that creation of the Trust, in addition to enabling Intersem to acquire the farm, will make possible the future acquisition of properties which are needed in the operation of Intersem.

**I. The New Community Trust**

The New Community Trust is a nominee trust of Intersem, and Intersem is

its sole beneficiary. The purpose of the Trust is to hold certain assets, primarily real estate, which are used by Intersem. The Trust's initial holding will be a 70 acre farm in New Hampshire which Intersem has held under rental agreement over the last year. Additional holdings may include other properties which Intersem now uses or will use in the future.

A parallel objective of the Trust is to establish an entity, separate legally and operationally from Intersem, which derives its financial support from different sources and in a different way. This objective is important both because it is very difficult to obtain support in the way of "bricks and mortar" from traditional charitable sources, and because it is recognized that Intersem will be stronger and more effective if it can, even in a small way, become less dependent on purely charitable support. Stated another way, it's a step toward standing on our own feet.

The Trustees of the Trust are appointed by the Board of Directors of Intersem, and the sole beneficiary of the Trust is Intersem. Presently, the Board of Trustees consists of the following individuals:

(trustees listed here)

A Board of Advisors to the Trust has been established to provide the Trustees with professional business advice on the conduct of the Trust's affairs. These advisors have been selected on the basis of their long experience in business and in the field of real estate and real estate finance.

(advisors listed here)

**II. The Farm**

The farm which the Trust intends to purchase is situated in Greenville, New Hampshire less than 90 minutes drive

from downtown Boston. The property consists of a large wood frame farm house with approximately 20 rooms and 70 acres of woodland and meadow.

Over the last year all members of the Intersem community have made full use of the farm. There are many examples of the farm's benefits and all of them cannot be mentioned here. A few of the more important include:

Community Weekend. The gathering occurs monthly for 2-3 day intervals, and embraces the full operating staff of Intersem—often more than 60 people at one time. Community Weekend is the only forum in which the entire organization can gather, and it is in this forum that all major organizational planning and policy decisions occur.

Staff Training Sessions. Experience has shown that the training of groups of staff members for any of the many functions being performed or in the creation stage can be done best at the farm. The environment there, quiet, serene and free from all distraction, is perfect in the process of education and interpersonal communication.

Summer Program - Kids. This last summer we experimented for the first time with intermediate term (more than two weeks) counseling with runaways. Six street kids (14 -18 years old) stayed at the farm with four counselors for about five weeks. They worked on the land and on their complicated personal problems as well. A great deal was learned in this trial, and this experience will make possible more effective programs in the future.

Summer Program - Farming. The other major summer program was farming. Four volunteer staff members spent the summer in charge of the farming program, not so much for the purpose of food production, which was very successful, but to make this kind of

work available to any one in the Intersem community who was game. Many did take part, and the program will be greatly expanded next summer.

### III. The Notes

The Notes presently offered by the Trust are 6-1/2%, 30 year notes with principal due December 31, 2001. Interest payments on the notes will be paid on an annual basis.

The Notes are the general obligation of the Trust and have no direct collateral interest in the assets of the Trust. Note holders may look only to the various assets of the Trust for satisfaction of the Trust's obligation for interest payments and final payment of principal. The Notes are subordinate to any further indebtedness the Trustees may deem advisable for the Trust to incur, either long or short term, secured or unsecured. The Notes may be prepayed at any time, in part or in full.

Use of Proceeds. The use of the \$20,000 received upon the sale of the Notes will be the following approximately:

Cash required for farm purchase	\$13,000
Renovation and improvements	7,000
	<u>\$20,000</u>

### IV. The Trust's Future

The purpose of the Trust is to obtain and hold assets which are of use in the operations of Intersem. To the extent additional financing can be obtained, either by the issuance of additional debt securities similar to those offered herein or by borrowing on a secured basis using the Trust's assets as collateral, the Trustees intend to acquire additional properties.

While no definite plans have been formulated, certain types of properties

have been contemplated and some possibilities can be suggested. Large houses in the Boston area, for example, have been identified as useful for housing Intersem staff members. Properties now used by Intersem in this way are leased and certain of these might be acquired by the Trust.

### APPENDIX

#### Projected Income and Cash Flow

##### Operating Costs and Debt Service

(Intersem will have operated the farm under rental contract for a full year in November 1971. It is on the basis of its experience over this time period that the annual operating costs outlined below have been projected.)

##### A. Operating Costs

Real Estate Tax	\$1,450
Heat	1,200
Utilities	1,000
Maintenance	1,000
Insurance	750

##### B. Debt Service for the Trust

Interest, 6-1/2% Notes	1,300
Contribution to cumulative reserve <sup>1</sup>	667
1st Mortgage amortization	1,500
	<u>\$8,867</u>

<sup>1</sup> The Trust will include as part of its annual operating budget an amount equal to 1/30th of the face amount of the long term notes sold pursuant to this offering. It is anticipated that this amount will be reserved each year and accumulated by the Trust for the purpose of repaying the principal amount due on the notes at maturity. The Trustees intend to follow a similar policy with respect to any future long term debt financing.

#### LEASE WITH INTERSEMINARIAN

The Board of Directors of Intersem has agreed to enter into a 3 year lease with the Trust for the use of the farm requiring lease payments of \$9,000 annually to the Trust. Under terms of this lease, the Trust may rent facilities at the farm to persons other than Intersem from time to time. Use by persons other than Intersem is contemplated only when specific functions are not scheduled by Intersem.

\*Interseminarian, Inc. is the legal entity which is the parent of Project Place and the many sister projects which have developed in parallel over the last four years. We call it Intersem for short.

\*Interseminarian, Inc. (Intersem) is the legal entity and parent of Project Place and the many sister projects which have developed in parallel over the last four years.

#### TERMS OF THE FARM PURCHASE

In September 1971, Intersem entered into a purchase and sale agreement with Helen Bateman for purchase of the 70 acre farm in Greenville, New Hampshire. Under terms of this agreement the purchase price is \$35,000, of which \$17,000 is derived from proceeds of a new 1st mortgage, \$13,000 is cash consideration, and \$5,000 is a 2nd mortgage to be assumed by the seller. Terms of the latter note require payment of interest at the rate of 6% annually and a term of 20 years. The purchase and sales agreement indicates that the purchase transaction be completed no later than December first, 1971.

#### APPRAISALS

In May and June of 1971, Intersem obtained three appraisals on the farm property. Each of the three was made by a professional real estate broker presently doing business in the southern part of New Hampshire. The appraisals indicated the following approximate fair market values for the farm, respectively: \$30,000, \$40,000, and \$50,000.

Caution: Do not use this document without consulting legal counsel. This document was drafted to conform to local law and conditions and might not be legally valid in your state and given your particular factual situation.

## Selected Bibliography

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### General

Borsodi, Ralph. *Flight From the City*. New York: Harper & Row, Harper Colophon paperback, 1972.

Borsodi, Ralph. *Seventeen Problems of Man and Society*. Anand, India: Charotar Book Stall, 1968.

Concept of "trusterty" is discussed in detail as "Problem XI, Trusterty and Property, the Possessional Problem." Volume is available from the School of Living, Freeland, Md. 21053.

George, Henry. *Progress and Poverty*. Schalkenback Foundation, 50 East 69th St., New York, N.Y., 1962. (First ed., 1880).

Hansen, Niles M. *Rural Poverty and the Urban Crisis*. Bloomington: Indiana University Press, 1970.

Keller, Suzanne. *The Urban Neighborhood*. New York: Random House, 1968.

Kotler, Milton. *Neighborhood Government*. Indianapolis: Bobbs Merrill, 1969.

Meadows, Donella H. and Dennis L.; Randers, Jorgen; Behrens, William W., III. *The Limits to Growth*, "A Report for the Club of Rome's Project on the Predicament of Mankind." New York: Universe Books, 1972.

### Land, Land Use, Land Economics

Barnes, Peter. "Land Reform [three articles]" *New Republic*, June 5, 12, 19, 1971. [The Great American Land Grab; The Vanishing Small Farmer; The Case for Redistribution]

Clawson, Marion. *America's Land & Its Uses*. Published for Resources for The Future, Inc. Baltimore: Johns Hopkins Press, 1972.

A compact, non-technical account of the nation's land and its many uses; a consideration of past history, present trends, and future possibilities, with chapters on recreation, agriculture, and urbanization.

*Community Economics*. An Occasional Bulletin. Issue on land. Cambridge, Mass.: Center for Community Economic Development, May 1972. \$1.00

Contant, Florence. *Land Reform: A Bibliography*. Cambridge, Mass.: Center for Community Economic Development, 1972. 40¢

9-page bibliography on land reform in the United States and abroad; land banking; land problems; land use; land as a corporate investment; land ownership.

Contini, Edgardo. "The American City — A Forecast," *The Futurist* 4:1, February 1972.  
Suggests the decommodification of urban land.

De Bell, Garrett. *The Environmental Handbook*. New York: Ballentine, 1970.

*Land*. The 1958 Yearbook of Agriculture. Washington, D.C.: U.S. Department of Agriculture.

Contains chapters on financial aspects of land use and rural land use planning.

*Land Tenure in the U.S.; Development and Status*. U.S. Department of Agriculture, Economic Research Service Bulletin No. 338. Washington, D.C.: Government Printing Office, 1969.

Little, Charles E. *Challenge of the Land*. New York: Pergamon, 1968-9.

Volume sponsored by the Open Space Institute, 145 E. 52nd St., New York, New York. Primarily concerned with issues of conservation.

*One Third of the Nation's Land*. Report of the Public Land Law Review Commission. Washington, D.C.: Government Printing Office, 1970.

Rose, John Kerr, *Survey of National Policies on Federal Land Ownership*, Senate Report, 85th Congress, Document No. 56. Washington, D.C.: Government Printing Office, 1957.

44 pages, surveying historic policies on federal lands, and studies, proposals, and bills to divest certain public lands to the states and private economy.

*Stewardship*. Open Space Institute, 145 E. 42 St., New York, New York, 1965.

*Urban and Rural America*. Advisory Commission on Intergovernmental Relations. Washington, D.C.: Government Printing Office, 1968.

Whyte, William H. *Open Space Action*. Outdoor Recreation Resources Review Commission. Washington, D.C.: Government Printing Office, 1962.

Includes essays on tax abatement, cluster and less than fee rights, voluminous appendix providing various statutes and deed forms.

#### **Planning, Development, and Financing**

Babcock, Richard. *The Zoning Game*. Madison: University of Wisconsin Press, 1966.

Plain talk about zoning.

Barringer, Richard et al. *A Maine Manifest*. The Allagash Group, 52 Front St., Bath, Maine 04530, 1972. 10¢

24 page tabloid publication; an analysis of Maine as an economic "hinterland"



with proposals for rational post-industrial development, including tax policies, land banks, CDCs, and demonstration programs.

Contant, Florence. "Community Development Corporations: An Annotated Bibliography." Cambridge, Mass.: Center for Community Economic Development, March 1972. 50¢

Comprehensive 28-page bibliography covering the following topic areas: Community Self-Determination Act; CDCs and other strategies for ghetto economic development; CDCs — tax considerations; CDCs — policy papers for the 1970s.

Dasgupta, Sugatha. *Social Work and Social Change*. Boston: Porter Sargent, 1970. *Gramdan* village development in India.

Digby, Margaret. *Cooperatives and Land Use*. Food and Agriculture Organization of the United Nations, FAO Agricultural Development Paper No. 51, 1957.

Surveys movements to reform agricultural landholding around the world and explores methods to maximize utilization of land in areas where land is scarce, with and without land pooling.

Edel, Matthew. "Community Development Corporations." Cambridge, Mass.: Center for Community Economic Development, 1970. 25¢

This 8-page brochure provides a good introduction to the community development corporation.

Foundation for Cooperative Housing. *A Program: Ingredients for a Successful Self-Sustaining Cooperative Housing Program*, a study prepared for the Agency for International Development, a subsidiary of the Foundation for Cooperative Housing, 1001 15th St., NW, Washington, D.C.

A 32-page booklet geared primarily toward implementing relatively large, government funded housing in underdeveloped areas (on a scale of 200 houses a year and up); the principles described regarding financing, construction, arguments for the cooperative basis, etc. are applicable to smaller cooperatives.

Gottschalk, Shimon. "Citizen Participation in the Planning of New Towns, A Cross-National View." *Social Service Review* 45:2. June 1971.

Gottschalk, Shimon, "Rural New Towns: Toward a National Policy." Cambridge, Mass.: Center for Community Economic Development, 1971. 60¢

Gottschalk, Shimon and Swann, Robert S. "Planning a Rural New Town in Southwest Georgia." *Arete* 2:1, Journal of the Graduate School of Social Work, University of South Carolina, Fall 1970.

Reprints of this article telling the early history of New Communities, Inc. are available from International Independence Institute, Box 183, Ashby, Mass. 01433.

"Is Maine's Past Maine's Future?" *Maine Times*, 3 March 1972.

This weekly newspaper, published at 13 Main Street, Topham, Maine 04086, is very much in tune with the concepts presented in this guide.

McClaghry, John. *Expanded Ownership*. The Sabre Foundation, P.O. Box 1114, Fond du Lac, Wisc. 54935. \$2.00

Abridged version is 100 pages, with an extensive bibliography. Contains result of study funded by Ford Foundation, Economic Development Administration, and U.S. Department of Commerce on "expanded ownership." "Cooperative ownership" is within the scope of this conservatively oriented study and there is a useful compendium of sources for technical and financial assistance for urban and rural housing, farm operation, cooperatives, and CDCs.

Morey, James A. and Epstein, Mel. "Housing Development: A Tool for Community Economic Development in Low-Income Areas." Cambridge, Mass.: Center for Community Economic Development, 1971. \$1.00.

A study of how community-based housing development can use the large sums of federal (and state) funds available for housing assistance in ways that can further the long-term economic development of low-income housing areas, and in the process attract outside equity investment. Includes a description of the limited dividend approach and a case study.

"Profiles in Community-Based Economic Development." Cambridge, Mass.: Center for Community Economic Development, 1971. \$1.00.

Capsule description of 27 urban CDCs.

Rivera, Jose. "CDCs: A Futuristic View." Cambridge, Mass.: Center for Community Economic Development, 1971. 50¢

An analysis of CDCs as innovative community-based institutions for social, political, and economic change; presents a scenario of the environmental constraints CDCs are likely to face in the next decade; suggests organizational strategies for CDCs to maximize their chances of success.

Smith, Page. *As a City Upon the Hill*. New York: Knopf, 1966.

An historical view of town development in America from colonial times to the present.

U.S. Department of Agriculture Economic Research Service, *Rural Housing: Trends and Prospects*. Agricultural Economic Report no. 193. Washington, D.C.: Government Printing Office, September 1970.

40-page booklet describes the status of rural housing, economic realities of housing rural families, reasons for poor housing, and financing sources for improving rural housing.

U.S. Department of Commerce, *Zoning for Small Towns and Rural Counties*. Washington, D.C.: Government Printing Office, 1967.

Includes zoning considerations for new towns.

Weiss, Shirley F., ed. *New Community Development*. Chapel Hill: University of North Carolina Press, 1971.

Yalan, Professor E. et al. *The Influence of Farming Rationalization on the Planning of Scattered and Gathered Settlements*. Haifa, Israel: The Rural Building Research Center (Hamakhpil), 1964

15-page booklet describing criteria for scattered vs. agricultural settlement, related to the social goals of the community.

Yalan, Professor E. *Land Planning of the Agricultural Co-Operative Village*. Haifa, Israel: The Israel Rural Building Research Bureau (Hamakhpil), 1963

A 26-page course manual with numerous plans for various types of agricultural communities. Also, a very brief but incisive rationalization for small farmer settlement as opposed to large farms.

#### Taxation

Brown, Harry Gunnison. *Land Value Taxation Around the World*. Schalkenbach Foundation, 50 East 69th St., New York, New York, 1955.

Douglas, Lord of Barloch. *Land-Value Rating*. London: Christopher Johnson Publishers, Ltd., 1961.

Netzer, Dick, *The Economics of the Property Tax*. Washington: Brookings Institution, 1966.

Good basic discussion of site value taxation.

*Property Taxation: Effects on Land Use and Local Governmental Revenues.*

Washington, D.C.: Government Printing Office, 1971. 40¢

A background study proposal by the Congressional Research Service for the Subcommittee on Intergovernmental Relations of The Committee on Government Operations, U.S. Senate.

Schwartz, Eli and Wert, James E., *An Analysis of the Potential Effects of a Movement Toward a Land Value Based Property Tax*. Albany, N.Y.: Economic Education League, 1958. 96 p.

A case study of a possible application of public law 299 Pennsylvania 1951 to Bethlehem, Pa.; a research project undertaken by the Institute of Research of Lehigh University.

**Theoretical-Descriptive**

Alyea, Paul E. and Blanche R. *Fairhope 1894-1954, The Story of a Single Tax Colony*. Birmingham: University of Alabama, 1956.

*An Intentional Community Handbook*. Community Service, Inc., Box 243, Yellow Springs, Ohio 45387, 1969.

Mimeographed booklet contains theory as well as a listing of intentional communities (as of 1969) and sources on the concept of community.

Holloway, Mark. *Heavens on Earth*. New York: Library Publishers, 1951. Study of 19th century "intentional" communities.

**Robert S. Swann**, director of the International Independence Institute. After fifteen years in the building and architectural fields, during which time he helped build cooperative housing projects and the country's first privately built integrated housing, in 1960, with his wife, Marjorie, he founded the New England Committee for Non-violent Action at Voluntown, Connecticut. Since 1964, Bob Swann has spent most of his energy working on nonviolent economic alternatives, particularly in the South. He helped create International Independence Institute in 1967 after meeting with Ralph Borsodi who had just returned from India with plans to establish pilot programs for alternative community economic development on a worldwide basis.

**Erick S. Hansch** has been a staff member of International Independence Institute since its inception in 1968, at which time he was working in close collaboration with Ralph Borsodi. Erick Hansch was born in Germany, lived several years in China, and makes his home in Portland, Oregon, when not involved in field work for the Institute. Not the least of his several careers has been in economics, in which he has served as advisor to one of the Oregon state legislators.

**Shimon S. Gottschalk** was among the founders of New Communities, Inc., and has served on its board of directors since its inception. He is a research associate at the Florence Heller School for Advanced Studies in Social Welfare, and lecturer in community organization and social planning at the Boston College Graduate School of Social Work. He has served as social planning consultant to Model Cities programs, community action programs, community development corporations, and to the Center for Community Economic Development. He is a staff member of International Independence Institute; his current primary interest lies in the development of a theoretical model for the systematic, social-structural analysis of alternative institutions.

**Edward Webster** joined the staff of International Independence Institute in 1971 after more than twelve years as a computer programmer, consultant to the printing industry, and technical publisher. Although continuing a certain amount of business consulting and writing, Ted Webster's major interest is furthering the work of the Institute and its sister agency, the International Foundation for Independence, which he serves as treasurer.